

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
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MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the State Register
(Agency or Board)

Regulation No. RgsTR one thru 100

Subject: General Provisions, Preparation, Submission and transmittal of Documents, Publication + Subscriptions

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

APR 16 1976

BY Edw Kladerman
AUTH. SIGNATURE

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Rev. 9-72

419

220

Attorney General

Michael B. Miller
Special Assistant
Attorney General

April 14, 1976

J. Michael Miles
Assistant Attorney General

296-6555

State Register Rules

Please find attached the proposed state register rules and associated materials which were submitted to the Attorney General's Office for approval as to form and legality on March 25, 1976. Although the rules generally appear to be in good order and supported by the record, I cannot approve them as to form and legality because several rules are not appropriate. Specifically, Rgstr 7, 62 and 63 cannot be approved as to form and legality for the reasons hereinafter set forth.

Rgstr 7 appears to dispense with the publication of certain materials incorporated by reference into an agency's rules, I believe this rule to be at variance with Minn. Stat. 1975 Supp. § 15.051, Subdivision 1, which states in relevant part: "The commissioner of administration shall publish a state register containing all notices for hearings concerning rules, giving time, place and purpose of the hearing and the full text of the action being proposed" (emphasis supplied). If materials forming a portion of agency rules were incorporated by reference such materials are a portion of the action proposed and, therefore, the "full text" thereof must appear in the state register. The arguments advanced in the record for Rgstr 7 dwell on the difficulty and expense of reproducing all matters to be incorporated by reference. While grave difficulties may be encountered, the clear meaning of the statutory language rather than the rigors of compliance must be the primary test.

Rgstr 62 and 63 both suffer from the same difficulties. First, both proposed rules qualify the level of adherence one must give to them. Rgstr 62 states that punctuation, capitalization, etc. "shall conform in general" to certain standards, while Rgstr 63 provides that real property descriptions "shall conform, so far as practicable," with particular standards. The net effect of the qualifiers in both rules is to cloud the issue of what type of performance is required. Consequently, both rules may be challenged as a result of vagueness.

The second and more predominant problem with both rules centers on the issue of incorporation by reference. Rgstr 62 and 63 seem to be trying to incorporate certain standards and publications by reference, yet no copies of such materials were supplied with the rules submitted and there is no indication that these were even

supplied to the general public. More importantly, several of the attempted incorporations do not identify documents by date of issuance, edition, etc. with the result that whenever the authors of the incorporated material alter the material the state register rules would also be altered. This type of incorporation by reference has been ruled illegal by the Minnesota Supreme Court in Wallace v. Commissioner of Taxation, 289 Minn. 220, 184 N.W.2d 588 (1971). Consequently, Rgstr 62 and 63 must be rejected.

JMM/sr

RULES AS ADOPTED

Chapter One: General Provisions

Rgstr 1 General

A. Documents published in the State Register shall be arranged under four principal headings in the following order:

1. Executive Orders
2. Rules
3. Proposed rulemaking
4. Official Notices

B. A separate issue of the State Register shall be published once a year, and shall be entirely devoted to descriptions of agency organization, as provided in Minn. Stat. § 15.0412, subd. 2 (1975).

Rgstr 2 Numbering and Dating

Minn. Stat. § 15.051, subd. 2 (1975) provides that all issues shall be numbered and dated. Issues shall be numbered by volume and number, for example, "Volume 1 Number 1". All issues of the State Register published in a given year shall be included in a single volume number. Issues shall be dated by day of the week, and date of the year and shall bear the legend, "St. Paul, Minn.", for example, "Wednesday, October 15, 1975, St. Paul, Minn."

Rgstr 3 Subject Indices

A. Each issue of the State Register shall include a Table of Contents, arranged in the order required by Rgstr 1.

B. An analytical, cumulative subject index, in the same form as that prepared by the revisor of statutes for publication with Minnesota Statutes, shall be published in the State Register at least once each three months. An

analytical subject index cumulated over a 12 month period shall be published annually.

Rgstr 4 Numerical Finding Aids

Each issue of the State Register shall contain a cumulative, numerical list of the subjects within each chapter of the Manual of State Agency Rules expressly affected by rules published in the State Register during the current quarter.

Rgstr 5 Publication of Rules by Reference

The Commissioner may elect to satisfy the requirements of Minn. Stat. § 15.0412, subd. 4, with respect to publication of adopted rules by signifying that the rules adopted are identical in every respect to rules formerly published in the State Register as proposed rules, specifically citing the volume and page on which the proposed rules may be found.

Rgstr 6 Details of Format of State Register

A. Documents subject to codification in the Manual of State Agency Rules which are published in the State Register shall be keyed to the rules and serve as a temporary supplement to the rules.

B. The closing date and hour of each issue of the State Register shall appear on the first page of each issue. The issue date shall be the day of deposit of each issue of the State Register in the United States mail for distribution.

C. The Commissioner may designate any other information relating to the nature, use or significance of the State Register for publication on

the first or second page of each issue.

D. Sections shall be divided as follows:

Admin. 1

A.

1.

a.

(1)

(a)

(i)

(aa)

Rgstr 7 Matter Not Required to be Published

Whenever a document incorporates by reference any portion of the text of the following publications, the Commissioner, unless the agency specifies otherwise at the time of its submission of such documents for publication, may omit the text of the incorporated material from the text of the document as published:

A. Minnesota Statutes; Minnesota Session Laws;

B. United States Code; United States Statutes at Large;

C. Code of Federal Regulations; Federal Register;

D. Any other publication generally available for sale and public inspection and so designated by the Commissioner.

Rgstr 8 General Permission to Reproduce Contents of State Register

The cross-reference tables, tables of contents, indices, numerical lists and codification guides published pursuant to this Title shall be copyrighted in the

name of the State of Minnesota and may be reproduced only with the consent of the Commissioner. There shall be no other restrictions on the reproduction or republication of documents or other materials published pursuant to this Title, and this section shall constitute the consent of the State of Minnesota to any such republication or reproduction.

Rgstr 9-50 reserved for future use.

Chapter Two: Preparation, Submission And Transmittal Of Documents

Rgstr 51 Publication Withheld

Minn. Stat. § 15.051, subd. 1 (1975) provides that the Commissioner may withhold publication of any material not submitted according to the form or procedures prescribed in these rules. The Commissioner shall not withhold publication of any material without providing the submitting agency with prompt notice.

Rgstr 52 Approval as to Legality; Filing

A. Minn. Stat. § 15.0412, subd. 4 (1975) provides that rules, excepting emergency rules, shall be submitted to the Attorney General for approval as to form and legality.

B. Minn. Stat. § 15.0412, subd. 4 (1975) provides that rules, excepting emergency rules, shall be filed in the office of the Secretary of State.

C. Upon approval by the Attorney General and after filing in the office of the Secretary of State, except where such approval or filing is unnecessary, two duplicate legible copies of the document shall be deposited with the office of the State Register for publication.

D. All copies of documents submitted to the Office of the State Register for publication shall carry the certification of the executive officer, chairman or secretary of the submitting agency, or his designee. Initials and impressed signatures shall not be acceptable.

Rgstr 53 Agency Responsibility

The accuracy and completeness of documents submitted for publication in the State Register are the responsibility of the submitting agency. All documents shall be thoroughly proofread before submission for publication.

Rgstr 54 General Format

Documents submitted for publication in the State Register shall be in the form indicated in these rules.

Rgstr 55 Name of Submitting Agency

The name of the submitting agency shall be carried on the front page of any document submitted for publication in the State Register.

Rgstr 56 Name of Agency Subdivision

Documents submitted by or for a specific board, commission, bureau or similar unit within a department or overall agency shall bear the name of such board, commission, bureau or unit on a separate line immediately below the name of the submitting agency.

Rgstr 57 Short Title

A suitable short title identifying the subject of the document shall be provided beginning on a separate line immediately below the name of the submitting agency or agency subdivision. Whenever appropriate, a brief caption indicating

the nature of the document may be added.

Rgstr 58 Affected Documents

A. A list of sections of the Manual of State Agency Rules affected by proposed or adopted rules submitted for publication shall be provided beginning on a line immediately below the short title. The list shall be in the following form: "Volume 1, Manual of State Agency Rules, Department of Commerce, Banking Division, page 21," or "Volume one, Minnesota State Register, page 201," in the event the affected rule has not been published in the Manual of State Agency Rules.

B. A citation to any other documents previously published in the State Register affected by the document submitted for publication shall be provided beginning on a line immediately below the list of sections of the Manual of State Agency Rules affected.

Rgstr 59 Requirements as to form and size

A. All documents filed with the Office of the State Register by an agency pursuant to these rules shall conform to all other applicable provisions of these rules and to the following requirements as to form and size:

1. The first page or face sheet of each document shall be 16 or 20 pound white paper 8 1/2 inches wide by 11 inches in length. A 1-inch margin shall be left across the top of the sheet immediately below which there shall be three boxes each 2 1/2 inches high. The center box shall be 3 1/2 inches wide and the boxes on either side shall be 2 1/2 inches wide. In the center box there shall appear the following language:

"Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:" which shall be followed by the name of the agency issuing the document, the date of the adoption, and the signature and title of the person signing the certification. The box on the right side shall be filled with the information required by Rgstr 55-Rgstr 58. In the box on the left shall appear the following language:

"Copy below is hereby approved as to form and legality," which shall be followed by the name of the Attorney General, the signature of the Special Assistant or Assistant Attorney General, and the date of such approval. From the left hand box to the bottom of the page a margin at least three-fourths of an inch wide shall be left along the left hand side of the page.

Attached hereto as Exhibit A and made a part of this rule is a copy of a face sheet in the style, form and size prescribed. Such prepared face sheets may be obtained from Central Stores, located at 671 North Robert Street, St. Paul, Minnesota 55101.

2. Every sheet of paper following the face sheet shall also be 16 or 20 pound white paper 8 1/2 inches wide by 11 inches in length. A margin one inch wide shall be left along the top of each continuation sheet and along the full length of the left side of the sheet a margin not less than three-fourths of an inch shall be allowed.

Attached as Exhibit B and made a part of this rule is a copy of a continuation sheet in the style, form and size prescribed. Such prepared continuation sheets may be obtained from Central Stores, located at 671 North Robert Street, St. Paul, Minnesota 55101.

3. Documents shall be typed, serially paginated, double-spaced on only one side of a sheet and there shall be no interlineation. After filing with the Office of the State Register the documents shall not be altered in any way. Documents which are pasted or glued on the prescribed size sheets or the over-all measurements of which exceed those specified shall not be accepted for publication. Documents may not be attached to such sheets by pin, staple or adhesive tape.

Rgstr 60 Waiver

The Commissioner may waive any of the requirements of these rules relating to style, form, and size at the request of a submitting agency if the Commissioner determines that the copy submitted by the agency is suitable as an original and as a printer's copy.

Rgstr 61 Language

All documents shall be drafted in plain, readable English. Technical or uncommon expressions, understandable only by a minority of the general public shall be avoided, except where subject matter requires.

Rgstr 62 Punctuation, capitalization, spelling

Punctuation, capitalization, spelling and other matters of style shall conform in general to the most recent editions of the United States Government Printing Office Style Manual, the Document Drafting Handbook of the Federal Register, The Fundamentals of Legal drafting by Reed Dickenson (1965) and The Elements of Style by White and Strunk. Legal citations shall follow the form prescribed by the most recent edition of "A Uniform System of Citation published by the Harvard Law Review."

Rgstr 63 Descriptions of tracts of land

Descriptions of tracts of land shall conform, so far as practicable, with the most recent edition of the "Specifications for Descriptions of Tracts of Land for Use in Executive Orders and Proclamations," prepared by the Bureau of Land Management, U.S. Department of the Interior.

Rgstr 64 Use of words or figures to express numbers

The numbers ten and under, when not used in a citation, shall be expressed in words in running text. The numbers 11 and larger shall be expressed in figures.

Rgstr 65 Illustrations, tabular materials and forms.

Whenever possible documents should be drafted as to make the inclusion of illustrations, tabular materials and forms unnecessary. If their inclusion cannot be avoided, a notice of intention to submit such materials shall be given to the Office of the State Register, and Schedule 3 and the following shall apply:

A. Illustrations. The original drawings or clear reproductions of all maps, charts, graphs or other illustrations shall be forwarded to the Office of the State Register twenty working days prior to the time of formal submission, as provided in Minn. Stat. §§ 15.051, subd. 2. A notice of intention to submit such materials shall be given to the Office of the State Register at that time. A reproducible copy of the original illustration reduced to a size approximating 8 by 10 1/2 inches, shall appear as part of the two duplicate legible copies of the document.

B. Tabular Materials. Advance copies of tabular materials comprising more than two type-written pages shall be forwarded to the Office of the State Register ten working days prior to the time of formal submission, as provided in Minn. Stat. § 15.051, subd. 2. A notice of intention to submit such materials shall be given to the Office of the State Register at that time.

C. Forms. Forms for application, registration, reports, contracts and the like, and the instructions for preparing such forms shall be forwarded to the Office of the State Register ten working days prior to the time of formal submission, as provided in Minn. Stat. § 15.051, subd. 2. A notice of intention to submit such materials shall be given to the Office of the State Register at that time.

Chapter Three: Publication and Subscription

Rgstr 66-90 reserved for future use

Rgstr 91 Designation of Agency Representatives

Each agency shall designate a representative to serve as liaison officer in relation to the Office of the State Register. Wherever feasible, a single representative shall be designated to function on behalf of all divisions within the agency or department.

Rgstr 92 Notification of designation

Each agency shall notify the Office of the State Register in writing of the name, title, address and telephone extension of each agency representative designated in compliance with Rgstr 91 (relating to designation of agency representatives), promptly upon adoption of these rules. Whenever a change in representation is made by an agency, prompt notification shall be given to the Office of the State Register.

Rgstr 93 Liaison duties

The liaison officer shall represent his agency in all matters relating to the submission of documents to the Office of the State Register and respecting general compliance with the provisions of these rules.

Rgstr 94 Receipt and processing

Documents shall be received at the Office of the State Register during regular office hours.

Rgstr 95 Correction of errors

In the event an agency discovers an error or omission in the official text of a document published pursuant to these rules, the agency shall forthwith deposit, without regard to the requirements of Minn. Stat. § 15.0412 (1975), relating to notice of proposed rule and adoption of rules but with regard to the requirement of approval as to form and legality by the Attorney General, if applicable, or to the other requirements of these rules, with the Office of the State Register, an appropriate correction to the official text. Nothing in this rule shall be construed to violate Minn. Stat. § 15.0412 subd. 4.

Rgstr 96 Publication Schedules

All materials submitted for publication in the State Register shall be published according to Schedule 1, 2, or 3.

Rgstr 97 Procedure for Schedule 1

A. A document shall be assigned to "Schedule 1" upon specific request of the submitting agency and agreement thereto by the Office of the State Register. Requests may be made by letter or otherwise, as time permits. Confirmation of the assignment shall be made as promptly as possible.

B. Schedule 1 is designed to provide the fastest possible publication of a document involving the prevention, alleviation, control, or relief of an emergency situation. Requests for such publication should briefly describe the emergency and the benefits attributable to immediate publication in the

State Register. Documents assigned to Schedule 1 shall be published on the publication day next following the day of filing.

Rgstr 98 Procedure for Schedule 2

In the absence of special arrangement with the submitting agency, documents shall be assigned to Schedule 2 for regular publication. Receipt in the ordinary course of business shall be considered as a request for such publication.

Rgstr 99 Procedure for Schedule 3

A. Documents that are the subject of agreements involving special editorial or publication services may be placed in Schedule 3 by prearrangement.

B. Documents may be assigned to Schedule 3 only because of technical problems requiring additional time to prepare material for the press. The requirement of additional time generally may be obviated through advance consultation with the Office of the State Register respecting unusual tabulations, illustrations, or exceptionally voluminous submissions.

C. Documents assigned to Schedule 3 because of technical problems shall be published as nearly on regular schedule as practicable.

Rgstr 100 Requisitions for quantity overruns of specific items

To meet requirements for special distribution in special quantity of the State Register, agencies may request an overrun of an entire specific printing. Requests of overrun must be made to the Office of the State Register at the time material is submitted for publication and shall include the estimated number of copies required. Single issues and overruns may be purchased at either the Office of the State Register or the Documents Section.

EXHIBIT A

Copy below is hereby approved as to form and legality. By: _____ (Special) (Assistant) Attorney General _____ Date of Approval	Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by: _____ (Agency) Date of Adoption: _____ By: _____ Title: _____ (Exec. Officer, Chairman or Sec.)	_____ Name of Submitting Agency _____ Name of Agency Subdivision _____ Short Title _____ List of Affected Rules _____

(Do not write in this space)

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE RICHARD L. BRUBACHER

COMMISSIONER OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULES OF THE STATE)
REGISTER DIVISION GOVERNING)
OPERATION OF THE OFFICE OF)
THE STATE REGISTER.)

TRANSCRIPT

Monday, December 29, 1975
Conference Room D, 5th Floor
Veterans Services Building
St. Paul, Minnesota

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE RICHARD L. BRUBACHER

COMMISSIONER OF ADMINISTRATION

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULES OF THE STATE)
REGISTER DIVISION GOVERNING) TRANSCRIPT
OPERATION OF THE OFFICE OF)
THE STATE REGISTER.)

The above-captioned matter cameon for hearing before Myron Greenberg, duly appointed as Hearings Examiner in this matter, on Monday, December 29, 1975, commencing at approximately 9:00 a.m. in Conference Room D, , 5th Floor, Veterans Services Building, St. Paul, Minnesota

I N D E X

PANEL MEMBERS:

Mr. Morrow; Acting Director of the Office to the State Register
Mr. Osterby, Assistant Commissioner of the Department of Administraion
Myron Greenberg, Hearing Examiner, Office of Hearing Examiners

PUBLIC SPEAKERS:

Tom Triplett, Assistant councel to the Minnesota State Senate, Senate Governmental Operations Committee. ..8,9,10,23, 47.

James Nobles, House Research Department, Minnesota House of Representatives, House Governmental Operations Committee. 9,13,14,24

Dr. J. G. Flint, Secretary and Executive Officer, Minnesota State Livestock and Sanitary Board. 19

Jerome Clysdale, Analyst, Department of Public Saftey.....25,26,51

Pamela Streed, Planner, Environmental Planning Agency of the State Planning Agency. 26,30,32

Jack Ditmore, Representing the Department of Agriculture and the Director of Planning and Development. 32

MR. GREENBERG: This hearing is called to order. This is a hearing in the matter of the proposed adoption of rules of the State Register Division, governing operation of the Office of the State Register. This hearing is being held pursuant to a notice of hearing and order to show cause, signed by Richard L. Brubacher, Commissioner of Administration, dated November 26, 1975. My name is Myron Greenberg and I am an independent hearing examiner appointed to hear this matter this morning. My job is to preside over the hearing and submit proposed findings of fact and conclusions of law and recommendations to the agency prior to the agency's decision whether to adopt, modify or reject the proposed rules. Will those representing the Office of the State Register please note their appearance for the record.

MR. MORROW: Mr. Hearings Examiner my name is George Morrow. I'm the Acting Director of the Office of the State Register.

MR. OSTERBY: Im, Norm Osterby and I'm Assistant Commissioner of the Department of Administration.

MR. GREENBERG: Off the record I will read the Rules Hearing Agenda and Guidelines, so we are all familiar with how the hearing will be conducted. For the record, you'll note please, rules - points nine and ten on the Rules Hearing Agenda and Guidelines;

> "It should be noted that anyone who desires to submit a written brief or other written comments bearing upon the proposed rules may do so within twenty days of the close of this hearing. Such material should be submitted to the Office of Hearing Examiners, Room 300, 1745 University Ave., St. Paul, Minnesota, 55104. The materials must be received within the twenty day period to be considered."

You are also advised that under Minnesota Statute Section 108.01 Subdivision 11,:

"Any individual representing persons or associations attempting to influenence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual."

This hearing will be conducted pursuant to the model rules of the Attorney General. I will receive any jurisdictional documents at this point.

MR. MORROW: Mr. Hearing Examiner, my name is George Morrow, Acting Director of the Office of the State Register. We have today a certificate from the Secretary of State indicating that the complete list of names on the Secretary of State's list purpose of receiving notice of public hearing on proposed rules was sent out. We also, have an affidavit of mailing by individuals to the effect that a true and correct copy properly enveloped has been sent to all persons on the Secretary of - of the proposed rules has been sent to all persons on the Secretary of States list. We also have an affidavit, myself, that I in fact received the Secretary of State's list - list of all representatives, associations, or interested groups or persons who had registered on the Secretary of States list. The last two documents are unexecuted. However, I can personally attest to their validity. There is a notice of hearing signed by Richard L. Brubacher Commissioner of Administration a hearing to be conducted at 9:00 a.m. this day and in this room. There is an order for hearing also signed by Richard L. Brubacher, Commissioner of Administration, ordering a hearing at this time and in this place on this subject. I also offer Mr. Hearings Examiner, a statement of need which reads as follows:

"The above caption rules - I should say the matter of the proposed adoption of the rules in the State Register Division governing the operation of the Office of the State Register The above caption rules are not amendments to existing rules of the Office of the State Register. The need to adopt these rules arises because of Minn. Stat. Section 15.041, 1975. The matters covered by thise rules are deemed of sufficient

importance in their general applicability and future effect, so as to aquire promuligation of rules. These rules are being promuligated for the purpose of clarifying how and when rules, executive orders and official notices should be prepared and filed for publication in the State Register. These rules are also intended to provide for efficiency and simplicity of operation with respects to the submission of all documents for publication in the State Register.

That concludes the jurisdictional documents Mr. Hearing Examiner.

MR. GREENBERG: Do you also have an affidavit of the Secretary of State?

MR. MORROW: I do. Mr. Hearings Examiner that was the first document I submitted.

MR. GREENBERG: For purposes of the record Mr. Morrow would you also indicate that you have appointed me as hearing examiner for this matter?

MR. MORROW: Mr. Hearing Examiner I would like to indicate for the record that we have appointed you as hearing examiner for this hearing.

MR. GREENBERG: The documents are received if there are no objections? Seeing no objections the documents are received. Are there any other preliminary matters? There being none Mr. Morrow would like to proceed with your presentation?

MR. MORROW: Mr. Hearings Examiner the Department of Administration has a presentation, today, to make on the subject of these rules. We also would like to enter into the record a number of statements made by other interested parties. I wish you would receive them now. A statement by Thomas J. Triplett, Assistant Senate Counsel and James Nobles, Legislative Analyst, House Research. A statement by the Department of Agriculture by Jack Ditmore subject to these rules. A statement by the Minnesota Pollution Control Agency submitted by Peter Gove. And a statement by myself, Acting Director of the Minn-

esota State Register on behalf of the proposed adoption of these rules. Mr. Hearing Examiner, I would like to proceed to a general survey of the rules, what they contain, and I think also the more positive characteristics.

MR. GREENBERG: For the record, those documents shall be received.

MR. MORROW: Thank you, Mr. Hearing Examiner. I'd like to point out that the proposed rules of the Office of the State Register were developed as a matter of public notice. The general intention that the Office of Public Record - Office of the StateRegister, though it was to be conducted as a - something between the agencies would, in fact, have considerable impact upon the public, and there was a general need for having some general discussion of the rules which govern the internal operations of this office. To that end, the Department of Administration set up an ad hoc committee on the State Register. A committee which was dedicated to the establishment of a consensus on the subject of these rules. The committee consisted of the following individuals representing the following agencies:

Hy Cohen	State Printer
Duane Harves	Chief Hearing Examiner
Tom Kalitowski	Department of Agriculture
Jim Hiniker	Department of Public Welfare
Fred Goff	Department of Health
Lovell Richie	Pollution Control Agency
Ken Bjork	Highways
Mike Miller	Attorney, State Register

In a series of meetings lasting approximately two months, the committee met and eventually established a consensus. A consensus is represented by the document which is submitted today for discussion, the proposed rules of the Office of the State Register. I hasten to add, however, that not - in not all cases - in some cases, there was perhaps some dispute, and that while this document

represents a consensus, it cannot be taken as representative of interests of each of the agencies in each case. We understand, in fact, that some of those agencies do have different requirements will undoubtedly make us aware of them today. I'd like to add also that the proposed rules represent a - something of an experiment. The concept of a State Register is still relatively unique. It is certainly unusual to require that a State Register sustain itself to the cost of its subscriptions. Only Minnesota can claim this. Accordingly, the rules are perhaps more tentative than we might like, and I do believe that they establish first principles and a general scheme. While discussion today will naturally center to some extent on the defects of the rules, I believe it's important to talk about the rules' positive characteristics. I should like to do so now. In the first place, the proposed rules bring together in a single document all relevant law on this subject. Not only the rules which, of course, are set out here, but recorded statutory material also incorporated into the rules. Though this is perhaps not good style, I do believe that it has practical utility. It puts together in one document all relevant law. Second, we think that these rules establish a very important first principle with respect to the operation of this office. Certainly register four - especially 4-G, set out the contents of the publication. I do so by quoting extensively from the statute, and in 4-G, something has been added. We note the difficulty of publication of any publication conducted on a two-week or less period. The difficulty of accepting for publication materials which are atypical or otherwise unprepared for. It is therefore, extremely important that matter

which is submitted is prepared for in advance, there be some consensus between the State Register and the agencies with respect to that material. Accordingly, in 4-G, it provides the material for publication may be designated by the commissioner. Note also, the order of publication as set out in register 6. Another important first principle established by these rules has to do with finding aids. Note that register 12 establishes a subject index. A very important device which we expect to be of great utility. The practicing bar and with interested - all interested parties. A numerical finding aid established at register 13, and generally, details of format as set out at register 15. The rules also provide for publication in certain circumstances, certain very restricted circumstances, by reference, where full publication of the document involved would be both a needless waste of the taxpayers' money, and in fact, a physical impossibility within the statutory required period of publication of ten days. I suggest you take note of register 14 and register 16 in this connection. In register 16, particularly, you'll note 16-D, which allows the commissioner, unless the agency specifies otherwise, in its order of adopting documents to omit the text of the incorporated material from the text document as published. This applies only to any generally available publications so designated by the commissioner. To give you an example of what I am talking about, I'm told there is a uniform building code which is incorporated by our building division, incorporated by reference, which consists of more than a thousand pages. The publication price of this periodical is established at something around seventy-five dollrs per page per issue. The cost of publishing a document of that size,

a document which is otherwise generally available in great quantity would be prohibitive, and would be, in fact, a physical impossibility. It would be physically impossible for an office of this size, an office of five individuals, to publish a document of that size in five days. It would cost something around $90,000. In this case, I believe nearly a third of the budget of this particular agency. Clearly, the Legislature could never have intended such an absurd result when it provided for the publication of proposed rules and republication of adopted rules. Again, the proposed rules establish restrictions on the form of documents submitted for publication, thus facilitating the printing process, and what I've said so far should be clear that this publication is going to have to conduct at the maximum of speed and efficiency possible. Is therefore, extremely necessary, extremely important that provisions be established - that rules be established with respect to the format of documents submitted for publication. I. direct your attention to registers 53, 59, 61, 62 and 63, particularly to register 62. You will note we have provided for extreme uniformity in documents submitted for publication. Frankly, I don't believe it's possible to publish this periodical once a week without such uniformity. In any case, if it is impossible for an agency to submit materials according to the rules set out, the rules which I've already indicated, we do provide in register 64 for a waiver of those requirements by the commissioner under certain restricted circumstances. The proposed rules also, I believe, provide useful assistance in matters of style. I direct your attention to registers 65, 66, 67, 68, 69 and 70. I note in passing that register 66, which requires that an agency interested in maintaining proper style have recourse to those documents there

listed, might be required, under the present language of the statute to be published in the State Register. Again, if that were the case, I suggest it would be impossible and needlessly expensive of the taxpayers' money. Finally, the proposed rules establish three publication schedules thus enabling publication of all material submitted for publication in the shortest time possible. I direct your attention to the concept set out at schedule - or registers 96, 97, 98, 99, 100, 101,102, 103 and 104. There are three schedules: Immediate emergency on schedule one; in the due course and regular course of publication, schedule two; and schedule three, atypical documents which must be submitted well in advance of the time of publication so that they may be adequately prepared for. Finally, the proposed rules establish criteria for the establishment of the cost of subscription to this publication. I note the intention of this office insofar as may be possible, it causes publication to pay for itself through publication. There are, obviously, going to be defects and omissions in these rules; however, we believe they represent this - this document represents the best effort possible under the circumstances. We welcome discussion for the purpose of discovering those areas and omissions. Thank you, Mr. Hearings Examiner.

MR. GREENBERG:. Are there any questions or comments? Are there any comments or questions to be raised by anyone present?

MR. TRIPLETT: Mr. Hearings Examiner, speaking strictly for myself, I have a statement which has been submitted to the record, but we also had some comments that we'd like to make if they're appropriate at this time.

MR. GREENBERG: They are appropriate. Please, before you make the statement, would you state your name and also indicate who you represent.

MR. TRIPLETT: Mr. Examiner, my name is Tom Triplett; that's T R I P L E T T. I am assistant counsel to the Minnesota State Senate with primary responsibility to the Senate Governmental Operations Committee.

MR. NOBLES: And Mr. Hearings Examiner, I'm James Nobles, N O B L ES with House Research Department in the Minnesota House of Representatives, and my primary responsibility is with the House Governmental Operations Committee.

MR. TRIPLETT: Mr. Examiner, we should stateaat the outset that although we do represent the Legislature in various capacities, we are - and certain legislators are aware of our appearnce here, anything we say does not indicate the opinion of the Legislature in its entirety, or of any individual legislator. You have received from us, and it has been submitted into the record, a letter dated December 22nd, by which we set forth various reservations and comments about the proposed rules. It's not our intent this morning to go through each of those comments; however, we do have several of the rules that we would like to comment upon in particular. First of all, we're concerned about the publication at all of certain of the rules. We feel, for example, that register 110 and register 111 are inappropriate to be included in agency rules. More generally, we have serious reservations over the desirability of promulgating rules that merely repeat verbatim existing statutory language. I understand the desirability, from a convenience standpoint, of having all relevant statutes and rules relating to the State Register in one easily accessible place. On the other hand, our concern is that the first of all publication of verbatim statutory language is an unnecessary duplication and costly. Secondly, we are already working on, or considering, proposed amendments to statutory language

which would, of course, require new rule hearings for the changes of the rules to comport with statutory language, and again, we feel these reasons argue against publishing verbatim existing statutes. We feel more specifically that the agency has not demonstrated the reasonableness of, and thenecessity for, publication of verbatim statutory language. My next specific comment is in regard to register 4, and in particular, register 4-G. Mr. Morrow has commented upon rule 4-G, the fact that it gives the commissioner discretionary authority whether or not to publish any official notice submitted by an agency head. We bring to the attention of the Hearing Examiner the amendment in Laws 1975, Chap. 380, §12. In that language, and it's been codified as §15.051, the statute specifically removes that discretionary authority of the commissioner. The former language read that the commissioner may further publish any official notices in this register which he deems to be of significant interest to the public. That language was specifically changed. The commissioner shall further publish any official notices in the register which a state agency requests him to publish. We feel that language is sufficiently explicit. The change of intent is obvious, and we therefore feel that part of 4-G is contrary to the expressed statutory language. In register 13, and in other subsequent rules, there is reference to the term "regulations". You will note from Laws 1975, Chap.380, that the term "regulations" was specifically omitted from statute and substituted with the word "rules". Under -

MR. GREENBERG: Excuse me. What proposed rule were you referring to?

MR. TRIPLETT: Mr. Examiner, I'm referring to register 13 to start with, and then following throughout the term "regulations" is used in places in substitute for the term "rules" or in other places in

addition to the term "rules". We believe the amendments to the Administrative Procedure Act clearly indicated a preference toward using the term "rules" rather than "regulations". In rule 17, Mr. Examiner, the first line of the rule reads, "The cross reference tables, annotation," etc. The origin of the term "annotations" is unclear to us. We suggest, or perhaps, fear that the use of that term indicates an ability on the part of an agency head, or the Commissioner of Administration, to supplement the rules themselves with so-called annotations, comments, notes or whatever. There is no provision in the Administrative Procedure Act for anything other than rules themselves of an agency, and we, therefore, believe that the hint that an agency can comment or have annotations in regards to its published rules raises severe policy questions not contemplated in the APA and which the Examiner should give his attention to. On register 18, Mr. Examiner, we have a suggestion for an addition. It could be construed as a technical point, and yet we feel it's very crucial to effective reading, of proposed rules of an agency, and our suggestion is that the rules require that an agency, when submitting for publication its proposed rules and its final rules, that that publication show additions and deletions to existing rule language, and we suggest that the procedure currently used in Minnesota Statutes, the Session Laws, could be adopted by the agency, and that is that all added language, new language, to a formerly existing rule should be capitalized or underlined. All old language should be stricken. We are personally aware of several agencies which do not now use this technique, and if they have a long rule, for example, will simply publish the new version of the rule, and it requires a substantial amount of time to go back through and analyze word by word exactly which changes were made in the agency rules. We don't feel the addition

of this requirement would pose an onerous burden on the agency or upon the printing requirements for the register. On register 59 we suggest that the rules should perhaps, require the publication or the submission of proposed rule making of forms prepared by the commissioner. Rather than leaving matters of discretionary function or authority of the commissioner. That is if speed of publication and effiemency are that crucial then it's our suggestion that forms be prepared by the commissioner, be distributed to all agencies and that agencies be required to submit their proposed rules, and final rules on those forms. On register 70, - Mr. Chairman I'd just like to point out that the respective committees in the legislature that considered Chapter 380, gave careful attention to the question of whether of not forms should be published as rules in the State Register, or promulgated by rules according to the APA procedures generally. And it's again, not speaking for what the intent of the committee's were, but we do feel that the statutory language does not permit the assumption that a form whether or not it should be published as a rule, should be at the discretion of the agency head. That is it's our opinion that whether or not a form is a rule should be determined by the statutory language the definition of a rule. It should not be within the discretion of an agency head to determine whether or not his form is a rule. Clearly, there still has to be some discretion in determining whether or not a proposed form qualifies under the rule definition. One way of permitting this discrection would be to have the Commissioner of Administration determine whether or not a form is, in fact, a rule, rather than the agency head. And we therefore, suggest that as a possible amendment to register 70.

My final comments, Mr. Examiner, relate to register 105 and register 106. Mr. Morrow stated in his opening comments the policy as he sees it, and we feel that it is a desirable policy, that the register basically pay for itself out of subscription fees if possible. Again, we consider this to be a noble effort but we're also concerned that the register, copies of proposed rule making and so on, be readily available to interested persons, without the necessity of subscribing to the register itself. We are aware that provision does exist requiring each agency to supply any interested person with one free copy of the rule. However, it seems to us that there should be additional consideration and statements made in the rules relating to such things as special subscription rates for libraries and so on, so as to insure that the State Register be readily available to, generally regarded to as public sources of information, rather than the only options being either the purchase of a subscription which may be expensive, unduly prohibitive, for some people, or some institutions, or alternatively something more than requiring a person to come to the Capitol and pick up a copy if he happens to be interested in that rule. Again, we have no strong opinions on this but we are concerned that the State Register be made relatively readily available to interested parties. That concludes my part. Mr. Nobles do you - anything else?

MR. NOBLES: Mr. Hearing Examiner

MR. GREENBERG: Mr. Nobles just a moment before you begin your - Mr. Morrow do you want to respond to Mr. Triplett's comments or do you want to wait til after Mr. Nobles makes his comment?

MR. MORROW: Mr. Hearings Examiner, I think I would like to respond

now. As long as it's -

MR. GREENBERG: All right

MR. NOBLES: I could indicate, Mr. Hearing Examiner, Mr. Morrow, that my - I'd have just two very short comments which are on the same points as Mr. Triplett, so that you might want to respond to them at the same time. If I might go ahead.

MR. MORROW: Mr. Hearing Examiner I'll defer to -

MR. GREENBERG: All right

MR. NOBLES: Thank you. As I mentioned I only have two points, Mr. Triplett has covered very well the items in the memorandum that has been submitted to the Hearing Examiner and Mr. Morrow. The two points which I wanted to just comment on just a little bit further, deal with the matter of the Commissioner of Administration's discretion in allowing or not allowing material to be published and also the item of cost distribution of the State Register. On the first item on the commissioner's discretion, I think, that the point that Mr. Triplett has made is important. You have to look at the statutory language that was amended. The discretionary authority of the commissioner to allow or not allow certain material to be published was stricken from the law and it was now made a requirement that he publish any material that a state agency requests him to publish. Now I can recall the specific history of why that language was included. It was at the request of a specific state agency and it was for the specific purpose of removing the discrectionary authority. Now I can understand Mr. Morrow's concern and I can understand possibly some reason for seeming ambiguity. On the one hand the commissioner is told that he has to publish the material and on the other hand there is language in 380 which says he does have discretion-

ary authority not to publish. But I would point out that, that discretionary authority is not to publish material which is submitted improperly. And so I think, to clarify the ambiguity we should see it in terms that the commissioner does not have discretionary authority to not publish material submitted to him because of substance, but only because of form. If it isn't submitted in a proper form he then would have authority not to publish it or request that it be submitted to him in proper form. But it would be very inappropriate for the commissioner to say that he was not going to publish material submitted to him by state agencies because he deemed them not to be significant interest to the public. Because that language "deemed to be of significant interest to the public", has been specifically stricken from the law. I think, on the matter of concern that this might be abused by some agencies, that they might be engaged in submitting for publication irrelevant and insignificant material. I think that, that concern will be controlled by the expense. You recall that the agencies will have to bear the expense of the publication of materials that they submit. And so I think, that any agency that starts to submit unnecessary and irrelevant material will be quickly controlled by the expense of doing so. On second item of distributing the cost I too applaud Mr. Morrow's reading of the law because I think it is a very accurate one that the State Register is designed to as far as possible pay for itself. And I would again refer to a change in the law. In the original language establishing the State Register in 1974, the law required that the commissioner recoup mailing costs. And that language was specifically stricken and said he could collect reasonable expenses incurred in publishing the State Register.

I'm paraphrasing. I think the intent is clear that we wanted those who used the State Register to pay for it. Now there was a long series of discussions about how the State Register was going to be an instrument for better informing the public. And when we looked at this issue of imforming the public about actions of state agencies the State Register was only one instrument, only one mechanism beaause it was perceived that a State Register would be expensive and that the state should not pay for the State Register out of tax funds if that publication was simply going to be used by private interests, law firms, lobbying groups, what have you. But it was thought that for those who are willing to pay for the service it would be in the public interest for such a document to be available. Now I think that in light of those competing forces the desire to inform the public but also, seeing that something like the State Register should be as much as possible paid for by those who use it . I think that the suggestion that Mr. Triplett has outlined is probably the one that should strike a middle ground. That is placing the State Register and helping it in fact to be placed in libraries where people will have admittedly to take some initiative to go to their public library. But we do already have similar kinds of state documents available to them in libraries, the statutes the session laws, and I think it would be very appropriate to consider some means of helping libraries to obtain copies of the State Register for use by the public. Just to conclude that point as I said, the State Register was seen as only one means for the public to be informed. It's my personal opinion, trying to synthesize the discussions which took place in the legislature, that it was not the intent to have the State Register be the primary means of informing the public. Because, again, it would be an expensive item for the public to subscribe to. I think that

if you review the legislative history, you will find two other items that were of primary concern in informing the public. Number one, the Secretary of State's list was etained. At some point in the legislative history, the Secretary of State's list was done away with. That was not agreed to by many members of the legislature. They felt that it was a very appropriate activity of state government to have a free mailing list where the public could be informed of proposed actions by state agencies, and so the Secretary of State's list was retained, and in addition, agencies were and are now required to provide one free copy of proposed rules. That was an additional item which was felt to be an appropriate means for the State to assist the public in informed about proposed state actions. Mr.Hearings Examiner, those are the only two points which I wanted to elaborate on since they seem to be points that are in contention. Thank you.

MR. GREENBERG: Mr. Morrow, do you wish to respond?

MR. MORROW: Thank you, Mr. Hearing Examiner. I'd like to begin by expressing the appreciation - my appreciation, personally, and on behalf of the office which we're now beginning to establish, the Office of the State Register. For the testimony of Mr. Triplett and Mr.Nobles, I think it is extremely useful in a state where legislative history is inaceassible to have those people who were actually involved in the drafting of the statute come before us and talk about the intent, and I guess, in almost every respect, I either agree with their comments or think that any opposition would be something of a quibble. However, I'd like to make three points only. One is that I think the matter of publication of statutes in the rules is indeed a matter of style, and if these rules be taken for a model for other rules, there may be better reasons than your convenience for accepting such material fromthe rules, and, I guess,

we're not too determined to see that the rules publish statutory material verbatim. Second, with respect to rule register 4-G, about which there is already some dispute, and I imagine there will be more dispute in the future, our intent here was not only to facilitate the process of publication for this provision, but to avoid publication of such materials as press releases, the announcement of the appointment of minor agency officials and other such extraneous materials. The history with respect to such other similar publications on this matter is, I think, worth taking account of. New Jersey publishes press releases as a matter of course, and press releases that are published in the New Jersey register are, I think, better left out. I am not sure that cost to the agency is a sufficient deterrent. In any case, we did have a legal argument to make on this section of the statute which was generally referred to by Mr. Nobles. The legal argument is made in our formally prepared statement, and it was, in fact, based upon what Mr. Nobles has already recognized as an apparent contradiction, if not in language, in what we called meaning. We'll let that go and wait for your report on that. The third point I'd like to make is that in respect to register 70, the question as to whether ornnot forms ought to be published. You'll find, I believe, at least one statement submitted by an agency here today that addresses this question. Again, we were thinking about the cost of publication. We were trying to avoid unnecessary cost. I guess I would be very surprised if the commissioner had any discretionary power to determine if a form was a rule. It certainly doesn't appear in the statute, and I think that would be the kind of substantive determination which, if rule 4-G is wrong, it would certainly be wrong here, but though they are really essentially, I think, essentially small points on both sides of the argument. Again, I'd like to express our

appreciation on the appearance of these gentlemen they've contributed a great deal today, to the hearing, I think. Thank you Mr. Hearing Examiner

MR. GREENBERG: Do either of you gentlemen wish to respond? Are there any other comments or questions? Yes sir?

Dr. FLINT: I just have one question

MR. GREENBERG: Would you come to the microphone and identify yourself sir?

DR. FLINT: I'm Dr. J. G. Flint, F L I N T, I'm the secretary and executive officer of the Minnesota State Livestock and Sanitary Board. My question is, is it still going to be necessary to send out notices of public hearing to all the people listed in the Secretary of State's list, or is the State Register going to take the place of that?

MR. MORROW: Mr. Hearing Examiner I'll answer that question if I can. I believe you are required to do both. Am I correct Mr.--

MR. GREENBERG: Are there any other questions or comments? I would like to ask a few questions if I may, Mr. Morrow. First of all, I've noticed in the rules that's submitted that there are a number of typographical errors and things like that. Will those be corrected?

MR. MORROW: Mr. Examiner I am truly sorry for the typographical errors they --

MR. GREENBERG: Omissions of words, things like that

MR. MORROW: Yes, I suspect you are referring to register 94 and 95 particularly. If you would like I could go through the rules and supply those omissions and those corrections, now. The register at least with respect to register 94 and 95, the omission there should be supplied in the following fashion: Register 94.

"Documents shall be received at the location and during official office hours as fixed by register 110."

And with respects to register 95 the correction of errors:

"In the event an agency discovers an error or omission" in the official text"

MR. GREENBERG: In line three I presume the word - of register 95 - I presume the word forthword" is forthwith?

MR. MORROW: Mr. Examiner that is correct. Mr. Hearing Examiner there are a couple of other corrections that might be made at this time if you'd like.

MR. GREENBERG: Yes, why don't you -

MR. MORROW: In respect to register 106, in the third line of A it should read; "States, shall be fixed by the commissioner." A matter perhaps of form, Mr. Hearings Examiner, in the last sentence of that - of section - or a register one 106A6-A the last sentence has been criticized by some individuals as being without utility. That could be stricken. In register 108

MR. GREENBERG: Excuse me, did you say the last line of 10

MR. MORROW: The last sentence in register 106-A

MR. GREENBERG: Has been stricken?

MR. MORROW: Yes. In register 108 in the third line first word strike "are".

MR. GREENBERG: I'm sorry I didn't catch that

MR. MORROW: In register 108 the third line

MR. GREENBERG: Yes?

MR. MORROW: Strike are A-R-E. Mr. Hearings Examiner one other correction . I believe some corrections were suggested by the documents which we received into the record today but in order to clarify what appears to be an ambiguity, in register 58-A, 58-A line five. Which reads as follows:

Form: "Minn.Reg.BD 21, insert the word "meaning". The remainder of that line should read as follows: Minnesota Regulations, depart."

Drop two lines down to the line beginning 201, insert again the word "meaning", the remainder of the line to read: volumn one, Minnesota State Register, page 201, in the

MR. GREENBERG: Did you have any other corrections?

MR. MORROW: No, Mr. Examiner, there are perhaps other changes we'd like to make, but they are suggested in the statement submitted by Mr. Triplett and Mr. Nobles, and I think it's sufficient to say that we agree with their suggestions for stylistic and statistic changes in the correction of errors.

MR. GREENBERG: All right. In rule 16 - register 16-D, proposed rule 16-D. You made note in your comments referring to this part of the proposed rules. When you say "any other generally available publications so designated by the commissioner," is there - do you have something specifically in mind when you say "generally available?"

MR. MORROW: Mr. Examiner, yes, I do. I have, for example, the matters or the materials set out in register 16.which are, in themselves, supposed to be representative of such generally available material, statutes, CFR, Federal Register. I also intend to have reference to materials such as the Uniform Building Code which is incorporated by references, I understand. I believe the Department of Agriculture in their formally prepared statements submitted into this record gives the example of still another such publication. I don't recall what it is, offhand, but perhaps the representative from the Department of -

MR. DITMORE: It's a - an example. My name is Jack Ditmore D I T M O R E. It is an example in both regulations now being issued by the department dealing with certified milk laboratories, to-wit, a

publication called Official Methods of Analysis of the Association of Analytical Chemist which is a textbook type publication over a thousand pages in length which is cited as reference for something our inspectors do when they go out to look at certain types of laboratories, We frequently have other similar type agents to federal publications or operational procedures that the Department of Agriculture also follows, which would also be substantial in length in certain cases.

MR. GREENBERG: Who has the discretion with regard to what is considered generally available, what criteria would be used?

MR. MORROW: Mr. Hearings Examiner that certainly is a good question. I - at the time we drafted this revision we were unable to decide what the basis for that discretion might be. And, as a matter of fact, because this provision is in - still in dispute, considerable dispute, it may have to be accepted as being contrary to the statute. The provision itself is highly tentative. The best we can do is refer to examples. I would suggest one other example. Register 66 in which we require that matters of orthography, capitalization, punctuation and style shall conform in general to the most recent additions to the following documents:

The United States Government Printing Offices Style Manual
The Document Drafting Handbook of the Federal Register
The Fundamentals of Legal Drafting by Reed Dickerson
The Elements of Style by White and Strunk
The Harvard White Book

It would seem to me that if these are generally available publications which might fit the definition set out in the provision we've been discussing, and if that provision is overturned as being contrary to statute, material such as that set out in register 66 would have to be published.

MR. GREENBERG: We'll take a five minute recess and reconvene in about five minutes. We are back on the record. Mr. Morrow did you have something that you wish to note for the record?

MR. MORROW: Yes, Mr. Examiner, I - It was brought to my attention that I neglected to discuss a recommendation by Mr. Triplett and Mr. Nobles to the effect that amendments to rules be published with the text of the rules as they exist indicating the amendments by strike outs and underlines for addition. I guess, we would find some difficulty with that because it requires to publish a great deal of material which may not be necessary to publish. There must be some other device to accomplish the end that Mr. Triplett and Mr. Nobles are seeking. That is to say to notify individuals in a clear and efficient fashion as to what is being deleted and what is being added, other than to publish - republish, not just once but twice. You recall the statute provides for publication of proposed rules and the adopted rules. Without adding this, it seems to me, a needless expense. That's really all I wanted to say Mr. Hearing Examiner.

MR. GREENBERG: Mr. Triplett?

MR. TRIPLETT: Mr. Examiner I'm Tom Triplett. I just want to make sure that, you know, that our point on this is understood. That is if a section of a rule, in its entirety, a subdivision or whatever is amended then it is our opinion that, that subdivision, section or the entire rule would probably have to be republished anyway. In other words if you're crossing out or changing one word in a rule I don't see how you can get away from publishing that whole rule with the new word in there in the first place. And if that's true it seems to us, it's not that great of a burden to cross out the old word put in the new word and underline it. I guess I don't see the

significant cost factor involved in doin that. Clearly, we don't intend that all of the Department of Public Safety rules have to be republished if you're only amending one subdivision or one section of that but it does not seem to be that great of a burden for making the changes we're taking about.

MR. NOBLES: I think that maybe an analogy could be made to make the point more clear. I think what Mr. Triplett and I had in mind is something analogous to what the revisor of statute does in drafting a bill for introduction into the legislature. And in fact, we may as Mr. Morrow suggests, have to make this clear in subsequent amendments to chapter 380, that the rule as proposed for amendment would be placed in a context where a person could tell the affect of the change. Now the revisor's procedure is to set forth no less than a subdivision in any statutory amendment. Now, admittedly, even that sometimes a person has to refer back to the section involved and sometimes even has to read the full chapter. But at least we don't have the situation which some states have, which I think sometimes leads to a great deal of confusion and sometimes even questionable activities , and that is for an agency to propose a rule change and submit either such a large or small portion of it with no designation of what the change is that the public is very uninformed as to what is taking place. This concern of ours comes about from personal experience of having agencies send over to us a set of proposed amendments to rules that are multiple pages long with no designation at all of what is being changed. And Mr. Morrow's concern about expense I would say, the fact of the matter is the expense exists now, because I've gone through agency rules where they've sent me ten pages and I find maybe three or four words that have been changed. And so we may want to think about some designation of rules according to

sections and subdivisions and then require no less than a certain amount of that designation, be it subdivision or sectoon or full rule or whatever. I think the intent is so that the change can be placed in proper context for public understanding.

MR. GREENBERG: O.K. Before I continue are there any other questions or comments?

MR. CLYSDALE: Yes Mr. Hearings Examiner? My name is Jerome Clysdale C L Y S D A L E, And I'm an analyst I work at the Department of Public Saftty. And to continue on the point that we were discussing the strike out and underlining I agree with the principle I think that new rules or old rules as amended should contain these sort of provisions. So that the not only the public, but anybody coming to the hearing or receiving a copy of the rules knows what has been changed. And there are several instances, in a proposed rule all new language as to the publishingthe register should be underlined and any deleted language should be stricken or have a line drawn through it. Then when the proposed rule is adopted only those changes that are different from the proposed rule should go by these criteria. That is, this would substantially reduce the printing requirements and then in a third case when a rule is published in a document, I believe it's called Minnesota Regulations there should be no underlining or deleting in that document. In addition to that I have two questions. In register 52-C we have a question, What is an "original copy?" It says "we shall submit two originally copies of the document, to the officer - Office of the State Register." Is this a xerox copy that is certified as a true copy or what exactly is it?

MR. MORROW: Mr. Hearing Examiner I'd like to respond to that question ff I may. The use of the word "original" there and I think elsewhere

in the, I believe it's in 62, I believe - register -

MR. GREENBERG: 61 and 63?

MR. MORROW: Thank you. It's certainly inaccurate. We do not mean two original certified copies. I think two duplicate legible copies would be sufficient.

MR. CLYSDALE: I have another question on register number 95. The question is, does this apply to errors made by the agency on the document filed or an agent - an error made by the Office of the Register in proofreading from the filed document?

MR. MORROW: Mr. Hearing Examiner, I would assume that it would refer to both.

MR. CLYSDALE: To both, O.K. There's another question that this leads to down toward the bot - 1, 2, 3, fourth line from the bottom in that rule says, "a corrective amendment." I guess I would take exception to the word "amendment". It sounds like the agency could slip in something that was not discussed at the hearing or even proposed in the rules, and I would - I don't have a word to suggest, but I would suggest that the word "amendment" be changed.

MR. MORROW: Mr. Hearing Examiner, Mr. Clysdale, I would agree with that. I think the word "amendment" is subject to some ambiguity. I can't think of an alternative, and I couldn't at the time I drafted the rule.

MR. CLYSDALE: Mr. Hearing Examiner, that's all I have. Thank you.

MR. GREENBERG: Thank you, Mr. Clysdale. Yes, Miss?

MS. STREED: Mr. Hearing Examiner, my name is Pamela Streed STREED. I'm a planner with the Environmental Planning Division of the State Planning Agency. I'm speaking today on behalf of Peter Vander Pohl, Director of the State Planning Agency. We're pleased to have the opportunity to comment on the proposed rules and regulations. We understand the difficulty of drafting rules and hope that our comments

will be of assistance to the Department of Administration. We are in agreement with the concept of the State Register as the official gazette of the State of Minnesota and endorse your efforts to begin implementing it. The State Planning Agency is affected by the proposed rule in two ways. First because it is a state agency and will have to comply with any rule making procedures setforth by the Department of Administration. Secondly, because the State Planning Agency Director is the chairman of the Environmental Quality Council which is in the process of developing a public information publication called The EQC Monitor. The EQC Monitor will be a document which contains notices of Environmental Quality Council actions and of selected Natural Resource management and development permit applications. It is possible that sometime in the future that the Environmental Quality Council may wish to publish some or all of this information in the State Register. For these reasons the state Planning Agency has an interest in the proposed rules for the operation of the State Register. Our comments here today will be general in nature. We plan to submit more detailed written comments into the record at a later date. Our first comment deals with the timing of the publication. The Aministrative Procedures Act, Minn. Stat. 1 - pardon me - 15.051 Subdivision 2, states that quote " The Commissioner of Administrations shall publish the State Register whenever he deems necessary except that no material properly submitted to him for publication shall remain unpublished for more than ten working days." close quotes. We are concerned that a bi-weekly publication cycle as proposed in these rules may be to long a cycle. We can see the possibility of some materials submitted late in the cycle being delayed beyond the statutory limit of ten working days. We also note that in the proposed rules

there is no mention of this ten working days statutory requiremtnnt for publication. We feel that this provision should be included in the State Register rules. In drafting a rules for the EQC Monitor we have felt that ten working day limitation for a bi-weekly publication is too short for our own methods of publication and we're concerned at this time that this is included in the Register rules. Our second comment deals with the statutory language concerning the accountability of the Commissioner of Administration for publication of materials in the State Register. Minn. Stat. Section - I believe this is a typographical error - 15.01 Subdivision 4, states that quote "When an agency properly submits a rule proposed rule, notice or other material to the Commissioner of Administration the commissioner shall then be accountable for the publication of seeing it in the State Register." close quote. We note no mention of this in the proposed rules. We feel that this is an important point and should be added to the rules. A third matter is one of correcting errors. Register 95 allows for the correction of errors quote, " In the official text of a document published pursuant to these rules." close quotes. However, the matter of the twenty day publication period is not dealt with in register 95. Does register 95 allow the correction of errors in published rules only before the twenty day period has elapsed? Our concern is that when the rules take the affected law, that is, twenty days after publication, rules can then only be amended through Chapter 15, Rule Making Hearings. I'd like to see this matter of when the correction of errors can occur be added to the register 95. Fourth, we note that register 4 contains the provision quote," Any official notice requested by an agency may be designated for publication by the Commissioner of Administration acting with the advice of the publication advisory board." close quote. We are concerned that the

word "may" in this sentence. The term may imply is that the Commissioner of Administration and the publication advisory board have some discrection in selecting items for publication. This is in direct conflict with the language of Minnesota Statutes 15.051 Subdivision 1 which states quote " The Commissioner shall (emphasis added) further publish any official notice in the register which a state agency requests him to publish." close quotes. In keeping with the language of the statute we suggest that register 4-G be amended to read quote, " Any notice properly submitted by an agency shall be designated for publication by the commissioner." close quotes. Fifth we have noticed that the proposed rules contain many reserved section. For example register 99 and register 101 which deal with the timing of materials submitted for publication are reserved sections. Because timing of the publication is one of the centrall issues for the operation of the State Register we feel that it is not properlyo leave these sections blank. While we understand the difficulty of wwriting these sections we feel that the intent of the Department of Administration for these quote " reserved" unquote, sections should be included in the proposed rules. My Sixth point deals with the topic of the original - the two original copies of the documents requested in the register 52-C. This matter has already been taken care of in previous testimony. Seventh register 108 states that quote, "Every agency that requests the publication of rules, proposed rules, notices or other material in the State Register shall pay its own porportbnate cost - pardon- share of the cost of the State Register." close quotes. Our question is what factors does the Commissioner of Administration use to determine the cost of publication, and are these factors - or these factors should be added to the section of the proposed rules. Our final comment is an administrative one. We've noticed

that Exhibit B of the proposed rules allows no kind of identifying marking which link it to proper Exhibit A. We suggest that Exhibits A and B be amended to allow some kind of serial pagination. This would assist the State Register staff in knowing which pages belong together and would alleviate the opportunity of mishandling. As previously stated, the State Planning Agency intends to submit more detailed and written comments at a later date. Thank you Mr. Hearing Examiner for allowing us this time today.

MR. GREENBERG: Thank you Ms. Streed. Mr. Morrow do you wish to respond?

MR. MORROW: Mr. Hearing Examiner I do. I believe that Ms. Streed's first point had to do with the requirements that the publication be published at least once every ten working days and the lack of such a provision in the rules. In fact, there is such a provision, it's found at register 5. Where is the section entitled Frequency of Publication of the State Register? I reads as follows: "The State Register shall be published at least once every two weeks and shall contain all previously unpublished documents required to be published by the appropriate sections of the statute." It is our intention, in so far as it may be possible and depending a great deal upon what rules are survive this hearing and subsequent discussion, to publish once every week.

MS. STREED: Very well, our concern was that it specified two weeks in the rules as opposed to the ten working days as in the statute.

MR. MORROW: Mr. Examiner, if there is an ambiguity I would suggest that we simply adopt the words of the statute which is "once every ten working days." A second comment which was made and to which I would like to address myself has to do with the provision set out in the

statute as §15.051, subd. 4, reading, "when an agency properly submits a rule, proposed rule, notice or other materials to the Commissioner of Administration, the commissioner shall then be accountable for the publication of the same in the State Register." I certainly have no objection to the inclusion of that in the rules. I guess I have some doubts to its - as to its validity. Given it - the vagueness of the word - the choice of words. However, I don't think I have any objection to that. Her fifth point, I think, is worth remarking. The fact that registers 99 and 101, and I believe there might be another one which is left reserved. They are left reserved because it is impossible at this point, in lieu of a printing contract and the establishment of the office itself, in more formal way to know exactly what the timing for these printing schedules ought to be. We really have no choice on this provision. I think the same could be said of the seventh point at the bottom of the page, second page, relating to the cost of the State Register to each of the agencies. This, I believe, is simply, at this point, incapable of any further definition. This will depend on two matters which are yet unaccounted for. We first want to establish a subscription price and a list of subscriptions. Once that is done, we'll have a better idea of what each agencywill have to ante up as its share. Second, we have not yet let a printing contract, and very clearly, a printing contract will be very much determinative of the cost to the agencies. I'll give you an example of this. The state of Maryland last year published, in the first year of publication, published a State Register very similar to ours at the cost of $75 per page per issue. This is an unknown. In short, until we have let a printing contract, we can't be

any more specific that that.

MS. STREED: Mr. Hearing Examiner I have question here. Would the cost of publishing the indices of agency submitted materials be included in the agency's cost of publication?

MR. MORROW: Ms. Streed / without knowing in advance how we are going to compute cost to the agency, we're only speculating on that, as I say only speculating, this is only tentative, we would assume it would be a cost per line pr per page, and therefore would not include those indices.

MS. STREED: O.K. Thank you.

MR. MORROW: Her final comment with respect to exibits B and A, I think, is worth taking note of. The other comments have been remarked on already. Thank you Mr. Examiner.

MR. GREENBERG: Thank you Ms. Streed.

MS. STREED: Thank you Mr. Examiner.

MR. GREENBERG: Are there any other comments or questions? Mr. Ditmore.

MR. DITMORE: My name is Jack Ditmore and that's D I T M O R E, AND I'm representing the Department of Agriculture. I'm the Director of Planning and Development for the department. The purpose of our statement today is to support, in general, the proposed regulations established by the State Register. Of particular importance to the Department of Agriculture, and to many of the other state agencies, are the proposed rules which will limit the volume of material which must be submitted for publication. At the present or at the same time the Department of Agriculture is very much concerned with the provision of essential information to the public. It is our opinion that the proposed rules strike the necessary balance between publication efficiency and the right know of the public in three important rules.

Register 16 deals with matters not required to be published. This rule would allow the Commissioner of Administration to designate any generally available publication as a matter which can be incorporated by reference in a proposed rule of the agency. While Laws 1975, Chapter 380, specifies that the state Register contain quote, " The full text of the action being proposed." end of quote. To publish in full a reference such as the Official Methods of Analysis of the Association of Analytic Chemists cited by the Department of Agriculture in proposed rules for certified milk laboratories could require over one thousand additional pages in the register. The additional costs associated with such a publication are prohibitive. We do not believe such publications to be intended by the law, provided they are generally available. The Official Methods are generally available. Register 14 provides that the Commissioner of Administration may elect to satisfy requirements relating to the content of the State Register with respect to publication of rules, by signifing that quote, " The rules adopted are identical in every respect to rules formally published in the Register as proposed rules." end of quote. Such a rule is efficient both in terms of reducing overall costs to the agency and also in terms in conserving natural resources. At the same time, citation of the volume and page of the proposed rule provides the public with necessary access to the information. Third, Register 70 states that tabulated blank forms for applications and instructions for preparing such forms shall not be published in full except on special request of the submitting agency. The Department of Agriculture employs a significant number of application forms such as for bonding and licensing. In our opinion, it is neither efficient nor

necessary to publish all said forms. They are readily available through the department and provided to the public upon request. Because we believe that rules such as those cited above reduce cost while providing adequate protections to the public we recommend adoption of such rules. The Department of Agricluture finds the designation of a agency liaison officer to be a desirable aspect of the proposed rules. The State Register is a new venture. The liaison officer can provide the coordination necessary for efficient inter -agency relationships. The proposed rules do leave open certain internal management concerns which liason officers can function to mitigate, Therefore, we support the rules at register 91 to 93. In general terms, the format of the State Register set forth in the proposed rules is very similar to that employed by the Federal Register and the Registers of certain other states. It is reasonable to employ such a structure in Minnesota. The Department of Agriculture, while generally in concurrence with the proposed rules is not without certain concerns in relations to these rules. These concerns have been raised before, in some instances, and I'll raise them again. The failure to make explicit agency cost sharing requirements in cases where receipts do not cover costs of publications, as raised by Ms. Streed previously, is also a concern to the Department of Agriculture. Register 108 provides authority to the Commissioner of Administration to determine the proportionate share of costs for an agency and to make quarterly billings. While we recognize that it is extremely difficult to set forth a formula without background information on which to make a decision, we do believe that the process can be set forth more clearly. In particular, we would recommend that language stating, in effect, that in quarters where the State Register shows

a positive balance is a profit, this balance be carried forward to offset any losses in following quarters. This effect might be achieved by adding language such as the following: After the phrase, "shall pay its own proportionate share of the cost to the State Register", in register 108, "In any quarter in which sales are in excess of cost of publication to the State Register, the excess shall be proportionally allocated between agencies requesting publications in that quarter and carried forward to offset any assessment which would otherwise be made against an agency in a quarter where costs are not recovered by sale of the State Register." In the future, experience with costs of publications may allow more explicit d statement of the process of determining agencies' shares of costs in the quarter. Such considerations will affect each agency's budgeting and planning process. A second concern relates to the signature requirements at register 63 as they relate to certification by, "an acting officer, vice chairman, assistant secretary or like officer." We find these considerations - the consideration of this register item to be unnecessary and undesirable. Minnesota Statutes, at Chapter 15.06, provides for delegation of powers by the commissioner or head of any state department or agency. Where the commissioner or head of the department or agency has designated the person to act on his or her behalf, we believe that that person should be empowered to certify documents to the register. To do otherwise results in unnecessary delay. In the future, we would recommend consideration and incorporation in the rules for the State Register of rules relating to contested cases. Thank you for the opportunity to present our views on these much needed and generally well-executed rules.

MR. GREENBERG: Thank you Mr. Ditmore. Mr. Morrow do you wish to respond?

MR. MORROW: Mr. Hearing Examiner I think that for the most part we would be in agreement with the presentation just made. There may be some difficulty with the language which was suggested as a substitute for the language relating to cost and assessment against the agencies. However, I think, generally it's a -- it would be an adequate substitute for the existing language.

MR. DITMORE: The language is intended to be generally indicative.

MR. BJORK: Mr. Hearing Examiner my name is Ken Bjork, Department --

MR. GREENBERG: How do you spell your name. Sir?

MR. BJORK: -- of Highways. BJORK, I'm sorry. The department did not plan on submitting any testimony, but because of some of the statements at the hearing we think, that we would like to submit a written statement for the record within which - the twenty days, we understand, is siill open to us.

MR. GREENBERG: Fine. Are there any other questions or comments? Mr. Morrow, I have some other questions I'd like to raise, with regard to register proposed rule register 12, on the subject indices. I understand that all the materials which are published in the State Register are eventually incorporated into some other permanent form, such as the rules of the various agencies, But, you note, an analytical, cumulative index covering more than the twelve-month period, That's ooted there? Such as a twelve month index plus a cumulative index- cumulative yearly index?

MR. MORROW: Mr. Hearing Examiner, I apparently find ambiguity there. I guess it's my understanding that register 12-B provides only as follows: A publication of an analytical cumulative subject index once

every three months, then the accumulation of that index at the end of the year and to be published annually, and that is it. Any cumulation that occurs after that twelve-month period would be in the next quarter, and tthen it would commence again. Mr. Hearings Examiner, perhaps the problem here is that, as I understood it, there are really two publications involved here. One is the manual State Agency Rules which will continue to be published independently of this. It will have its own index, and this publication, which is in an essence a supplement to the Manual of Rules during that three-month - those three-month period when there is no supplement in existence. This is for the purpose of this publication only, and that's all.

MR. GREENBERG: My understanding, however, is that in addition to rules, other materials are published in the State Register.

MR. MORROW: That's correct.

MR. GREENBERG: Is there a-an index which is cumulated from the time of publication, through theyears, which will index the materials published in the Register not just for the preceding twelve months, but for the preceding twelve months, then the preceding year, or years, as the years go by?

MR. MORROW: Mr. Examiner, there is no provision for that.

MR. GREENBERG: Does the agency feel there is a need?

MR. MORROW: Mr. Examiner, there may be a need, but I would, my own feeling would be that it might be outweighed by the inconvenience and the cost. Every time we put anything into print, publish any page of documentation, as I've said already on a number of occasions, it will cost up to $75.00 per page. A cumulative subject index which would extend over a period of years could be extremely expensive.

MR. GREENBERG: With regard to proposed register rule 17. You note that the rule proposes that certain materials shall be copyrighted. Can you explain the need for the copyright?

MR. MORROW: Yes, Mr. Examiner, I'm glad you raised that question. The need for copyright is documented in the formal statement which we introduced into the record at the beginning of this hearing. However, I would like to take a few minutes to talk about that. To begin with, there is precedent for the claim of copyright in a state; the prededent as in the state of Pennsylvania. Language, which I want to add in passing, is very similar to the language which is set out here in register 17. I believe also, and apparently the state of Pennsylvania also believes, there is some legal basis for such a claim. The practical and policy reason in support of a claim of copyright would be as follows: One to protect unique editorial devices from private competition and note, the copyright applies only to editorial devices, subject indices, numerical lists and such. It does not apply to public documents, such as would be submitted for publication and published in the State Register. Access to those documents is provided for by Chapter 15.17 in the Public Records Law which provides that all state documents drafted by public officials in the conduct of their office are public for all purposes, including copying, so the copyright extends only to those editorial devices, and the second rule is to insure that any copying to the Minnesota State Register be restricted to official documents and not the format, thus, the subscription process be circumvented. I'd like to point out, as I have previously in my testimony, this publication will be conducted in essentially the same way and on the same basis as any private publication. I think it's therefore, important that this state reserve

to itself the same rights that any private competitor reserve to itself. However, I think, we don't-wouldn't go down on this particular rule. I think it's an important and convenience provision but certainly not - shouldn't be determinate of the rules.

MR.GREENBERG: With regard to some of the technical requirements that are raised in the rules, particularly with regard to register 62, that also refers to Exhibit A, and I'm questioning, I guess, notation is made of a one-inch margin across the top of the sheet, immediately below which, etc. On the exhibits, it doesn't appear that that's the case. Is that what is intended, that the exhibits do not-that the agencies submitting materials submit them on forms exactly as proposed in Exhibits A and B, or that the exhibits are for exemplary purposes only? In other words, is there supposed to be a title where it says face sheet on Exhibit A?

MR. MORROW: Mr. Hearings Examiner, thank you for raising that question. The two exhibits are not intended to be precise renditions of the format which we would ask the agencies to follow. They are representative only, suggestive, I should say. Not only is the question of the one-inch margin at the top of the page raised by these exhibits, I would indicate to you that the language, "face sheet for filing documents of the Office of the State Register" is, in fact, not a title to be submitted with the documents butonly for purposes of this exhibit. Not only is that not identical with the format we expect to be adopted, but you'll note, also, in the various provisions which are set out in the exhibit certain impossibilities. For example, on the right-hand column in thelast line, there is provided a space for affected rules. Well obviously, if the list of affected rules is as extensive as it might be, that space would be insufficient to contain such a

list. It is, in fact, a tentative and suggestive document only.

MR. GREENBERG: I also note that there is no provision for any uniform type of words to be used in the headings. Do you anticipate use of any kind of uniform headings to be used? or what is to be used in the headings?

MR. MORROW: Mr. Examiner, we didn't consider that in the drafting of these Exhibits. I guess I'm of two minds about that. I think there would be some utility in requiring uniformity here as in every other respect. On the other hand, maybe there's some opportunity to exercise some creativity in the title that we've got to recognize. I don't know that we can anticipate in every instance the nature of the documents, especially since we may end up publishing every official notice requested to be published.

MR. GREENBERG: So you would leave that, then, in terms of the discretion?

MR. MORROW: I guess I would leave that as it is.

MR. GREENBERG: You answered one of the questions that was raised about original - the question that was raised about original documents. Given the fact thet your response, as I understand it, was that duplicate originals, whether they be photocopy or carbon originals, are submissible. Is that correct?

MR. MORROW: Yes that's correct, Mr. Hearings Examiner. In discussions I had out of this hearing with individuals concerned with this question I thought the language "legible duplicates" was very appropriate. So, yes, that would include a copy -- a photocopy.

MR. GREENBERG: All right. Does that - or is there a requirement or do you anticipate a requirement that there be some sort of certification as to the fact that it is an exact duplicate of the original?

MR. MORROW: Mr. Chairman, in register 61 we do provide for certification

and/or authentication by the executive officer, chairman or secretary of the agency. I understand from the testimony we've heard today that there may be some inconvenience involved in that. And perhaps we would want to look to an alternative. Anyone who is duly authorized for that purpose by the agency, as to say, to certify or authenticate such documents, might be sufficient.

MR. GREENBERG: Along the same lines if duplicate includes such photocopies I'm not an expert in the type of paper used by commercial duplicating machines, but if they don't meet the requirements of 16-pound or 20-pound paper as you require in the register - proposed register rule 62-1 and 2, how would those be accounted for?

MR. MORROW: Well, Mr. Examiner, the commissioner has given in the statute, I believe it's - I believe it's section 15.051, Subd. 1, I believe, the power to withhold from publication any materials which are not submitted according to the form or manner he has prescribed. It is our opinion, and I believe the consensus of the ad hoc committee, that it was necessary to establish strict requirements as to the form and manner for submission of documents. You understand that it's not merely the Office of the State Register which is concerned here, it's the printer also. I don't believe that the printer can adequately work from say onion paper which would be less than the 16- pound minimum. Nor, do I believe it would be convenient for him to work with construction paper of say 30-pound or 50-pound weight. Time is of the essence. Efficiency and speed are very important. So, I would guess, what I would say is, yes, we are insisting on 16 and 20 pound weight. We insist on those other requirements, and we do so within the commissioner's statutory power.

MR. GREENBERG: Again, due to my lack of expertise in paper I just, I'm familiar with the term "bond paper", and I don't know whether or not

a paper that is 20-pound bond would be or a paper that contains a great deal of rag content would be heavier or mor flimsy than what you are concerned with and there's - to my knowledge, there's no indication of whether rag content or bonded paper is mentioned in the rules.

MR. MORROW: Mr. Examiner you're right it is not mentioned or not specified, and it is entirely possible that we have neglected that kind of a, in a couple of places, that kind of specificity. I think that the commissioner's power to waive, which would be rarely exercised through the record of the Office of the State Register any of the requirements of these sections may be sufficient to account for any variances which are legitimate.

MR. GREENBERG: Could you explain to me, Mr. Morrow, I just don't know the definition of the word "interlineation" as it appears in the proposed rule 62, Subd.3.

MR. MORROW: Certainly. By interlineation, Mr. Examiner, we mean a hand written or type-written insertion between the lines. You'll note the documents already submitted on doublespaced, between the lines of the documents you're excising or adding to material - printed material in the document.

MR. GREENBERG: Would this cause any inconvenience to agencies submitting material to be published?

MR. MORROW: Mr. Examiner, I anticipate that it will cause some inconvenience, here, and perhaps elsewhere in the section of the rules. Again, I'm afraid, I've go to insist that the process of publication -- let me give you some greater indication of what's going to be involved here. Documents to be submitted for publication, possibly on a Friday, Of course, they won't actually be processed

begin to be processed until the following Monday. If it's possible, we will attempt to process those documents for publication within one day to begin with. Processing-let your imagination run on that subject, but having processed the document, we'll send it off to the printer. It will be a considerable effort on the printer's part to do his job in two days, 48 hours, which is, in fact, what he is going to have to do if we are going to meet our publication schedule. He's got to set up the-it will be hot metal process, he has to set up the material submitted for publication in type, and then he has to proofread it, not once but twice, himself, all the materials submitted for publication in any particular issue. He's got to do that in forty-eight hours. He then has to get it back to us. He's going to have to establish some kind of a - some kind of a dispatch service so we can get it back and forth-get them back and forth to us immediately. After we've received the galley proofs back from the printer, we will then have two more days to proofread it ourselves. Given the fact that our office will consist of five individuals and perhaps only two will be engaged in full-time proofreading, it's extremely important that there be no irregularity in the documents being submitted for publication. Interlineations, though I can understand their utility, could slow down that process. It's a - I guess I'm sorry to say it's something like a domino theory that if you allow one variation that it maybe that you'll get a great deal, and we have one of the individuals served on the ad hoc committee, Staunmeyer, who is the head of the document section, has tales to tell of the kinds of documents which are submitted for publication and their total inutility, as far as publication is concerned.

MR. GREENBERG: With regard to proposed rule 65, I'm confused by the proposed rule. It-the language states, this refers to language and

it says"all documents shall be drafted in plain readable English. Technical or uncommon expressions, understandable only by a minority of the general public shall be avoided except where subject matter requires." Does this rule indicate that the language is being determined by the State Register? Or is the agency that is submitting matters for publication, the one determining how the rules are stated and what language is used?

MR. MORROW: Mr. Hearing Examiner I - it does not do the latter. I say it does not make any substantive statement about the kind of language which only make up any documents submitted for publication. However, I think , it's true enough the word "form" which the commissioner has been given the power to prescribe, is sufficiently ambiguous so one might talk about its nature of the language. And I agree that this particular provision is not as explicit as it might be. And I suppose, we would be willing to allow it to be excised. However, I think there is some utility and some usefullness in requiring, whatever language is appropriate, requiring an agency to draft its documents in readable English. The experience of other states is, and of course I'm sure you are aware of the experience of the Federal Register people, that too much gets published in Federal Registers which is totally inscrutable. Nobody can understand it. We wanted to at least, in one provision, establish a requirement, though it might not be as specific as we would like, a document should be submitted in a - in plain English, and without the recourse to jargon which mostly- which frequently characterizes such documents.

MR. GREENBERG: When you refer to jargon I take it that that doesn't refer to substance - matters of substance such as of Mr. Ditmore may have raised, in matters that are particularily technical as they

refer to let's say the area of Agriculture which would not be understandable by you or myself or someone not involved directly in the field. Would that type of language by excluded by this proposed rule? MR. MO

MR. MORROW: Mr. Hearing Examiner, it would not. The language is perhaps not as clear as it might be, however, that's exactly - that was exactly our intention. And this - the proviso at the end of register 65 which reads,"Except where subject matter requires." is intended to allow for that exception. That's to say the exception made on behalf of those agencies that must, for a lack of an alternative incorporate technical language, in their documents.

MR. GREENBERG: I note just in passing that the language that you use in the title of register - proposed register 66, orthography, was something that I didn't understand.

MR. MORROW: Well Mr. Hearing Examiner until I - until I substituted the word "uncommon" for esoteric there was a some question as to whether that particular rule was understandable also. I think Mr. Hearings Examiner we would be happy to substitute for the orthography the word "spelling" in register 66.

MR. GREENBERG: That would be helpful to those such as myself. In proposed rule register 69 in the fourth or fifth lines there is reference to schedule three. Is that schedule three as it appears in the proposed register - Rules register 102 and 103?

MR. MORROW: It is.

MR. GREENBERG: I'm just wondering if that might be clarified in some way. If someone were reading the rules I don't know that, that's particularily clear.

MR. MORROW: Mr. Hearings Examiner I think that it might be clarified. There is some question as to whether there is conflict between

schedule three and the provision of statutes requires publication within ten working days. I don't necessarily believe that there is such a conflict in our formal statement submitted at the beginning of the hearing, I think, explains away any apparent conflict. What we are saying here, and perhaps it should be changed slightly, what we are saying here is that the material which is going to be difficult to print, illustrations and tabulary material set out in register 69 , should be submitted well in advance of the time that it is actually offered for publication in the State Register, four weeks or two weeks as the case may be. The altrrnative, or so I'm told by the printer, is that such material cannot be published in the State Register within the statutory time period. And if that's the case we simply have to prohibit submission of such material for publication. If we do that we'll be in conflict with another provision of the statute which requires publication of any official notice requested by an agency. So, we have attempted to reconcile that conflict with this particular provision. And, again, I don't think, it's necessarily a conflict between this and the statutory requirement of publication within ten working days should be construed so as to require the agency only to submit material such as this, illustrations and tabulary material, well in advance of publication so the printing may be prepared for it.

MR. GREENBERG: For my information purposes Mr. Morrow, material that's delayed in its publication, would it become effective on the date it should have been published or would have been published or on the actual date of publication? Perhaps I should be directing this to Mr. Triplett or Mr. Nobles, I really don't know.

MR. MORROW: Mr. Hearing Examiner I'd be happy to let one of them

try to answer that.

MR. TRIPLETT: Mr. Examiner we - our job is not to interpret statutes we merely write them. I would be of the opinion it would be upon publication, the actual date of publication, as opposed to some other date when it could have or should have been published. My intrepretation is certainly not controlling

MR. GREENGERG: Thank you Mr. Triplett. Mr. Morrow would indication of any kind be made in the State Register as to when the documents that are published were submitted for publication?

MR. MORROW: Mr. Examiner I don't - it would not be under these - the proposed rules and I frankly don't see the necessity for - for that. We are required to publish documents only within ten working days. An agency must assume, even though it may recieve weekly publications of the periodical, that it was - that the documents were submitted within ten days. A note from what Mr. Triplett said - from what the statute says that the publication is not effective legally effective until it is published in the State Register, so that date of submission is perhaps irrelevant.

MR. GREENBERG: O.K., With regard to proposed register rule 91. I note that there is nothing to compell designation of an agency representaiive. What happens if no agency representative is designated?

MR. MORROW: I'm not sure I understand what you mean Mr. Hearing Examiner if there- the language in the - register 91 is imperative It says " Each agency shall designate a representative?" It's true there is no penalty.

MR. GREENBERG: Does it make any difference to the Department of Office of the State Register how the agency representatives are

chosen?

MR. MORROW: Mr. Hearing Examiner I don't think that it does, Frankly, what we're looking for here is, of course, someone who will function both as a conduit, the documents which being passed between the agency and the Office of the State Register, and who have some authority to act in that capacity.

MR. GREENBERG: In the fourth line, am I correct in assuming that the word " depart" isextraneous?

MR. MORROW: You are

MR. MORROW: With regard to register - proposed rule register 93. Is the agency representative the only one who can submit material to the Office of the State Register? And in his absence who might?

MR. MORROW: That's a good question, Mr. Examiner I - it was one we did not entertain, obviously when we were drafting this rule.. The statute provides that materials be published upon agency request. I suppose that could be construed to mean, request by the Chief Administrative Officer of the agency or his designated subordinate. As - I know of no other alternative to assuming that the absence of the agency representative liason officer would incapacitate the agency to the purpose of submitting documents. I would presume that this provision must be given the construction that any other duly designated authority could submit documents. I'd be quite happy to add that.

MR. GREENBERG: I think it might be appropriate. I certainly entertain it. With regard to the proposed rule 104. The discussion that you've had with other people who have testified here today indicates you are - and your testimony I believe, is that you would like to have the - or intend to have the register published weekly.

MR. MORROW: That is true.

MR. GREENBERG: Is provision made, or is it anticipated, that special publications will be made when - if and when determined that such publications are necessary? On a as-needed-basis, or would it just be a regular publication, weekly?

MR. MORROW: I'm unsure what you mean by special publication.

MR. GREENBERG: I'm not sure I know when such a need would arise either such as an "extra" might be published for a paper. Would there be necissity to - could you anticipate the necessity of publishing a special issue of the State Register?

MR. MORROW: Well, Mr. Examiner, it is conceivable. You'll note that when the Federal Privacy Law went into effect, I believe in November, there was a requirement that the Federal Register attempted to carry out to the effect that all files on individuals being maintained by any governmental agency be published in the State Register. The State Register - the issue of the State Register which was published at that time consisted of thirty-nine thousand pages. Now, obviously, it's not possible ot publish thirty-nine thousand pages in a single issue without doing violence to the concept of what a single issue is. Now, it may be, as time goes on, we'll be required to publish material such as that by enactments which are subsquently passed into law. If that's the case, we may have to go to a - supplementary issues. I would not like to abandon the idea though of a regularly published onec-a-week periodical, even if we are required to publish a supplement in order to incorporate all the materials which are submitted for application. We could call the supplement. I don't believe it would be a goodidea, give the statutory requirements which surround / to get into the

business of publishing intermittently- publishing extra issues. We do, I want to note however, that we do provide for publication of the annual description of agency organization in one of the early provisions of the proposed rules in an extra issue.

MR. GREENBERG: In proposed rule 111. Can you explain the reason for this inclusion in the proposed rules?

MR. MORROW: Yes, I'm, - Mr. Hearing Examiner, I'm familiar to the objections to these - both these provisions 110 and 111. They indeed offer very little in the way of interpretation of the statute, And I certainly have no objection to their deletion. They are here like those passages from the statute which were quoted verbatim as a matter of convenience, And we certainly have no objection to their deletion. I think there is some utility to having this information in a set of rules, but then after all, I'm responding to this as an administratior not as an attorney.

MR. GREENBERG: My question, I guess, was also directed to the form of statement of the rule whether a rule can, in fact, state the office of the State Register is prepared, or whether it shall be prepared - or shall be prepared to give assistance or whatever. I'm not familiar with the form the rule should take nor do I have suggestions for it.

MR. MORROW: Mr. Hearing Examiner, I recognize that. However, I think, your point is well taken; it is in the passive voice. It ought to be either may or shall, and I'd be happy to change it.

MR. GREENBERG: With regard to register rule proposed rule 62. I don't recall whether this point was raised specifically by Ms. Streed or not. I note that there is no specification as to pagination of any kind for multi-page submissions for publication.

MR. MORROW: That is correct Mr. Examiner. There is no provision for pagination. It maybe worthwhile adding such a provision.

MR. GREENBERG: I didn't mean that in the form of a comment but rather as a question whether or not there would be such a proposal.

MR. MORROW: I think, it would either be - worthwhile to require that documents be numbered. There is a tendency for them to get lost otherwise as,so - they will be manhandled to a considerable extent.

MR. GREENBERG: Are there any other questions or comments?

MR. CLYSDALE: Yes, Mr. Clysdale from the Department of Public Safety. Does the designation of the liaison person require formal notification?

MR. MORROW: Mr. Clysdale, this is Mr. Morrow from the office of the State Register. I believe that is covered in one of the provisions relating to that - relating to that - yes, register 92," It's provided each agency shall notify the Office of the State Register in writing of the name, title, address and telephone of each agency representative designated."

Mr. CLYSDALE: And one additional informational question. When is the first edition of the Register supposedto be published?

MR. MORROW: Mr. Hearing Examiner and Mr. Clysdale the first issue is required, or I construed it as being required, to be published on July 1st, when all provisions relating to the State Register go into effect.

MR. CLYSDALE: Thank you, Mr. Chairman.

MR. GREENBERG: Is there anyone else who is present who has anything else to say? Any other comments, any other questions? Again I'll remind all those present that anyone who desiresto submit a written

brief or other written comments bearing on the proposed rules may do so within twenty days of the close of this hearing. Such material should be submitted to the office of Hearing Examiners, Room 300, 1745 UnUniversity Ave., St Paul,Minnesota 55104. These materials must be received within the twenty day period to be considered. You're also advised again, under Minnesota Statute, Section 10A.01, Subdiv. 11, 1974, that any individuals representing persons or associations attempting to influence administrative action such as the promulgation of these rules must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual. There are no other questions or comments? This hearing is closed.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE Richard L. Brubacher

COMMISSIONER OF Administration

In the matter of the Proposed Adoption of Rules of the Office of the State Register

ORDER ADOPTING

RULES

The above-entitled matter came on for hearing before the Hearing Examiner Myron Greenberg on the 29th day of December, 1976, at 9:00 a.m. in Conference Room B, 5th Floor, Veterans Services Building, St. Paul, Minnesota after proper notice required by Atty Gen1 302 and 303, promulgated under Minn. Stat. § 15.0412, subd. 4 (1974) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as the Proposed Rules of the Office of the State Register are adopted this 22nd day of March, 1976, pursuant to authority vested in me by Minn. Stat. § 15.051, subd. 1, and Minn. Stat. § 15.0412, subd. 1 and 3.

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

Richard L. Brubacher

Richard L. Brubacher

COMMISSIONER OF ADMINISTRATION

Exhibit A

PROPOSED RULES

FOR OPERATION OF THE

OFFICE OF THE STATE REGISTER

Chapter One: General Provisions

Rgstr 1 Definitions

A. Minn. Stat. § 15.0411, subd. 2 (1975) defines "agency" to mean any state officer, board, commission, bureau, division, department, or tribunal, other than a court, having a statewide jurisdiction and authorized by law to make rules or to adjudicate contested cases. Minn. Stat. §§ 15.0411 to 15.051 and 15.052 (1975) do not apply to (a) agencies directly in the legislative or judicial branches, (b) emergency powers in Laws 1951, Chapter 694, Title III, Minn. Stat. §§ 301 to 307, (c) Minnesota Corrections Authority and Pardon Board, (d) the Department of Employment Services, (e) the Director of Mediation Services, (f) the workmen's compensation division in the department of labor and industry, (g) the workmen's compensation commission, or (h) the department of military affairs.

B. Minn. Stat. § 15.0411, subd. 3 (1975) defines "rule" to include every agency statement of general applicability and future effect, including the amendment, suspension, or repeal thereof, made to implement or make specific the law enforced or administered by it or to govern its organization or procedure, but does not include (a) rules concerning

only the internal management of the agency or other agencies, and which do not directly affect the rights of or procedure available to the public; or (b) rule of the division of game and fish published in accordance with Minn. Stat. § 97.53 (1945); or (c) rules relating to weight limitations on the use of highways when the substance of such rules is indicated to the public by means of signs; or (d) opinions of the attorney general.

C. "Commissioner" means the Commissioner of the Department of Administration.

Rgstr 2 Minnesota State Register - the Official Gazette

The Minnesota State Register shall be the official gazette of the State of Minnesota.

Rgstr 3 Citation of State Register

The State Register may be cited by volume and page number. The approved short form of citation to the State Register is "M.S.R.". Thus "1 M.S.R. 201" refers to material beginning on page 201 of Volume 1 of the Register.

Rgstr 4 Contents of State Register

Minn. Stat. §§ 15.0412 and 15.051 (1975) provide that the following documents shall be published in the State Register:

A. A description of the organization of each agency, stating the process whereby the public may obtain information or make submissions on requests. Minn. Stat.

§ 15.0412, subd. 2 (1975) provides that descriptions of organization shall be published annually, in a manner to be prescribed by the Commissioner.

B. Emergency rules, where the statute governing the agency permits the agency to exercise emergency powers, or when the agency is compelled to act by court order or a federal law or rule.

C. Notices of agency action in seeking to obtain information or opinions from sources outside of the agency in preparing to propose the adoption, amendment, suspension or repeal of a rule.

D. All notices for hearings concerning rules, giving the time, place and purpose of the hearing and the full text of the action being proposed.

E. All rules, amendments, suspensions or repeals of rules.

F. Any executive order issued by the governor.

G. Any official notice requested by an agency may be designated for publication by the Commissioner, acting with the advice of the Publication Advisory Board. Minn. Stat. § 15.051, subd. 1 (1975) provides that the following official notices shall be published in the State Register:

1. The date on which a new agency becomes operational.

2. The assumption of a new function by an existing state agency.

3. The appointment of a commissioner.

Rgstr 5 Frequency of Publication of State Register

The State Register shall be published at least once every two weeks and shall contain all previously unpublished documents required to be published by Minn. Stat. §§ 15.0412 and 15.051 (1975) (relating to the contents of the State Register) which are duly filed with the Office of the State Register prior to the closing date and hour of the issue. The closing date and hour of each issue shall be prescribed by the Commissioner, but until further order of the Commissioner the State Register shall not be published.

Rgstr 6 General

A. Documents published in the State Register shall be arranged under four principal headings in the following order:

1. Executive Orders
2. Rules
3. Proposed rulemaking
4. Official Notices

B. A single issue of the State Register shall be entirely devoted to descriptions of agency organization, as required by Minn. Stat. § 15.0412, subd. 2 (1975).

Rgstr 7 Executive Orders

There shall be published under this heading all executive orders issued by the Governor which are required to be published by Minn. Stat. § 15.051, subd. 1 (1975).

Rgstr 8 Rules

There shall be published under this heading all rules, emergency or otherwise, amendments, suspensions or repeals of rules which are required to be published by Minn. Stat. § 15.051, subd. 1 (1975).

Rgstr 9 Proposed Rulemaking

There shall be published under this heading all notices for hearings concerning rules, giving time, place and purpose of the hearing and the full text of the action being proposed, as required by Minn. Stat. § 15.051, subd. 1 (1975).

Rgstr 10 Official Notices

There shall be published under this heading all official notices which are required to be published by Minn. Stat. § 15.051, subd. 1 (1975), including the date on which a new agency becomes operational, the assumption of a new function by an existing state agency, or the appointment of a commissioner.

Rgstr 11 Numbering and Dating

Minn. Stat. § 15.051, subd. 2 (1975) provides that all issues shall be numbered and dated. Issues shall be numbered by volume and number, as follows: "Volume 1 Number 1". Issues shall be dated by day of the week, and date of the year and shall bear the legend, "St. Paul, Minn.", as follows:

"Wednesday, October 15, 1975

St. Paul, Minn."

Rgstr 12 Subject Indices

A. Each issue of the State Register shall include a Table of Contents, arranged in the order required by Rgstr 6.

B. An analytical cumulative subject index, in the same form as that prepared by the revisor of statutes for publication with Minnesota Statutes, shall be published in the State Register at least once each three months. An analytical subject index cumulated over a 12 month period shall be published annually.

Rgstr 13 Numerical Finding Aids

Each issue of the State Register shall contain a cumulative, numerical list of the subjects within each title of Minnesota Regulations expressly affected by rules published in the State Register during the current quarter.

Rgstr 14 Publication of Rules by Reference

The Commissioner may elect to satisfy the requirements of

Rgstr 4 with respect to publication of rules by signifying that the rules adopted are identical in every respect to rules formerly published in the State Register as proposed rules, specifically citing the volume and page on which the proposed rules may be found.

Rgstr 15 Details of Format of Register

A. Documents subject to codification in Minnesota Regulations which are published in the State Register shall be keyed to the regulations and serve as a temporary supplement to the regulations.

B. The closing date and hour of each issue of the Register shall appear on the first page of each issue. The issue date shall be the day of deposit of each issue of the State Register in the United States mail for distribution.

C. The Commissioner may designate any other information relating to the nature, use or significance of the State Register to be published on the first or second page of each issue.

D. Sections shall be divided as follows:

Admin. 1

A.

1.

(a)

(1)

(aa)

Rgstr 16 Matter Not Required to be Published

Whenever a document incorporates by reference any portion of the text of the following publications, the Commissioner, unless the agency specifies otherwise in its order adopting the documents, shall omit the text of the incorporated material from the text of the document as published:

A. Minnesota Statutes; Minnesota Session And Pamphlet Laws;

B. United States Code; United States Statutes at Large;

C. Code of Federal Regulations; Federal Register;

D. Any other generally available publication so designated by the Commissioner.

Rgstr 17 General Permission to Reproduce Content of State Register

The cross-reference tables, annotations, tables of contents, indices, numerical lists and codification guides published pursuant to this Title shall be copyrighted in the name of the State of Minnesota and may be reproduced only with the consent of the Commissioner. There shall be no other restrictions on the reproduction or republication of documents or other materials published pursuant to this Title, and this section shall constitute the consent of the State of Minnesota to any such republication or reproduction.

Rgstr 18 Official Text of Published Documents

A. Except in the case of emergency rules, Minn. Stat. §§ 15.0412, subd. 4 and 15.051, subd. 1 (1975) provide that all rules and executive orders shall become effective 20 days after publication in the State Register and immediately upon the date of their publication in the State Register, respectively. The published text of any such rule or executive order shall therefore be the valid and enforceable text; thereafter any amendment to such rule or executive order shall be drawn to the official text as published in the State Register.

B. In the case of any other document published in the State Register, the published text shall be prima facie evidence of the valid and enforceable text of such document.

Rgstr 19 Presumptions Created

Minn. Stat. § 15.048 (1975) provides that publication of a rule or order in the State Register raises a rebuttable presumption that:

A. The rule or order was duly adopted, issued or promulgated;

B. The rule or order was duly filed with the Secretary of State and available for public inspection at

the day and hour endorsed on it;

C. The copy of the rule or order published in the State Register is a true copy of the original.

Rgstr 20 Judicial Notice

Minn. Stat. § 15.049 (1975) provides that judicial notice shall be taken of material published in the State Register.

Rgstr 21-50 reserved for future use.

Chapter Two: Preparation, Submission And Transmittal Of Documents

Rgstr 51 Publication Withheld

Minn. Stat. § 15.051, subd. 1 (1975) provides that the Commissioner may withhold publication of any material not submitted according to the form or procedures prescribed in these rules.

Rgstr 52 Approval as to Legality; Filing

A. Minn. Stat. § 15.0412, subd. 4 (1975) provides that rules, excepting emergency rules, shall be submitted to the Attorney General for approval as to form and legality.

B. Minn. Stat. § 15.0412, subd. 4 (1975) provides that rules, excepting emergency rules, shall be filed in

the office of the Secretary of State.

C. Upon approval by the Attorney General and after filing in the office of the Secretary of State, except where such approval or filing is unnecessary, two original copies of the document shall be deposited with the office of the State Register for publication.

Rgstr 53 Agency Responsibility

The accuracy and completeness of documents submitted for publication in the State Register are the responsibility of the issuing agency. All documents shall be thoroughly proofread before submission for publication.

Rgstr 54 General Format

Documents submitted for publication in the State Register shall be generally in the form indicated in the following sections and in the appendix attached to these rules.

Rgstr 55 Name of Issuing Agency

The name of the issuing agency shall be carried on the front page of the document.

Rgstr 56 Name of Agency Subdivision

Documents issued by or for a specific board, commission, or bureau or similar unit within a department or overall agency shall bear the name of such board, commission, bureau or unit on a separate line immediately below the name of the issuing agency.

Rgstr 57 Short Title

A suitable short title identifying the subject of the document shall be provided beginning on a separate line immediately below the name of the issuing agency or agency subdivision. Whenever appropriate, a brief caption indicating the nature of the document should be added.

Rgstr 58 Affected Documents

A. A list of sections of the Minnesota State Regulations affected by the documents submitted for publication shall be provided beginning on a line immediately below the short title. The list shall be in the following form: "Minn. Reg. Bd. 21," Minnesota regulations, Department of Commerce, Banking Division, page 21, or "1 M.S.R. 201," Volume one, Minnesota State Register, page 201, in the event the affected rule has not been published in the Minnesota Regulations.

B. A citation to any documents previously published in the State Register affected by the document submitted for publication shall be provided beginning on a line immediately below the list of sections of the Minnesota State Regulations affected.

Rgstr 59 Sample Forms

The following is a sample form which may be used by agencies in connection with the preparation of notices of proposed rulemaking,

[reserved]

Rgstr 60 Unpublished Documents Ineffective

Minn. Stat. § 15.0412, subd. 4 (1975) provides that rules which are adopted after July 1, 1976 and which are not published in the State Register shall be ineffective. Minn. Stat. § 15.051, subd. 1 (1975) provides that executive orders not published in the State Register shall be ineffective.

Rgstr 61 Rules; filing

Two duplicate original copies, certified by the executive officer, chairman or secretary of the agency, of any rule or other documents issued by an agency which are to be published in the State Register shall be filed with the Office of the State Register.

Rgstr 62 Requirements as to form and size

A. All documents filed with the Office of the State Register by an agency pursuant to these rules shall conform to all other applicable provisions of these rules and to the following requirements as to form and size:

1. The first page or face sheet of each document shall be 16 or 20 pound white paper 8 1/2 inches wide by 11 inches in length. A 1-inch margin shall be left across the top of the sheet immediately below which there shall be three boxes each 2 1/2 inches high. The center box shall be 3 1/2 inches wide and the boxes on either side shall be 2 1/2 inches wide. In the center box there shall appear the following

language:

"Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:"

which shall be followed by the name of the agency issuing the document, the date of the adoption, and the signature and title of the person signing the certification. The box on the right side shall be filled with the information required by Rgstr 55-Rgstr 58. In the box on the left shall appear the following language:

"Copy below is hereby approved as to form and legality," which shall be followed by the name of the Attorney General, the signature of the Special Assistant or Assistant Attorney General, and the date of such approval. It is the responsibility of the agency to secure the approval of the Attorney General, if required by Minn. Stat. § 15.0412, subd. 4 (1975). From the left hand box to the bottom of the page a margin at least three-fourths of an inch wide shall be left along the left hand side of the page.

Attached hereto as Exhibit A and made a part of this regulation is a copy of a face sheet in the style, form and size prescribed. Such prepared face sheets may be obtained from Central Stores.

2. Every sheet of paper following the face sheet shall also be 16 or 20 pound white paper 8 1/2 inches wide by 11 inches in length. A margin one inch wide shall be left along the top of each such continuation sheet and along the full length of the left side of the sheet a margin not less than

three-fourths of an inch shall be allowed.

Attached as Exhibit B and made a part of this regulation is a copy of a continuation sheet in the style, form and size prescribed. Such prepared continuation sheets may be obtained from Central Stores.

3. Documents shall be typed, double-spaced on only one side of a sheet and there shall be no interlineation. After filing with the Office of the State Register the documents shall not be altered in any way. Documents which are pasted or glued on the prescribed size sheets or the over-all measurements of which exceed those specified shall not be accepted for publication. Documents may not be attached to such sheets by pin, staple or adhesive tape.

Rgstr 63 Signature

A. All duplicate original documents filed by an agency shall be signed in ink by the chairman, secretary or executive officer of the issuing agency. Initials and impressed signatures shall not be acceptable. Certification by an acting officer, vice-chairman, assistant secretary or other like officer will be accepted only:

1. where the document has been approved as to form and legality by the Attorney General pursuant to Minn. Stat. § 15.0412, subd. 4 (1975) if such approval is necessary.

Rgstr 64 Waiver

The Commissioner may waive any of the requirements of these

rules relating to style, form, and size at the request of an issuing agency if the Commissioner determines that the copy submitted by the agency is suitable as an original and as printer's copy.

Rgstr 65 Language

All documents shall be drafted in plain readable English. Technical or uncommon expressions, understandable only by a minority of the general public shall be avoided, except where subject matter requires.

Rgstr 66 Punctuation, capitalization, orthography

Punctuation, capitalization, orthography, and other matters of style shall conform in general to the most recent editions of the United States Government Printing Office Style Manual, the Document Drafting Handbook of the Federal Register, The Fundamentals of Legal drafting by Reed Dickenson (1965) and The Elements of Style by White and Strunk. Legal citations shall follow the form prescribed by the most recent edition of the Harvard White Book.

Rgstr 67 Descriptions of tracts of land

Descriptions of tracts of land shall conform, so far as practicable, with the most recent edition of the "Specifications for Descriptions of Tracts of Land for Use in Executive Orders and Proclamations," prepared by the Bureau of Land Management, U.S. Department of the Interior.

Rgstr 68 Use of words or figures to express numbers

The numbers ten and under, when not used in a citation, shall be expressed in words in running text. The number 11 and

larger shall be expressed in figures.

Rgstr 69 Illustrations and tabular material

Whenever possible documents should be so drafted as to make the inclusion of illustrations and tabular material unnecessary. If their inclusion cannot be avoided, the documents will be held for delayed filing and publication, and Schedule 3 and the following provisions shall apply:

A. Illustrations. The original drawings, or clear reproductions, of all maps, charts, graphs, or other illustrations shall be submitted to the Office of the State Register four weeks before the date on which publication is desired. A legible reproduction of the original illustration reduced to a size approximating 8 by 10 1/2 inches, shall appear as part of the original and duplicate original document.

B. Tabular Materials. Tabular material comprising more than two type-written pages shall be forwarded to the Office of the State Register two weeks before the date on which publication is desired.

Rgstr 70 Forms

Tabulated blank forms for application, registration, reports, contracts, and the like and the instructions for preparing such forms shall not be published in full, except on special request of the submitting agency. In lieu thereof there shall be submitted for publication a brief statement describing the function of the form and indicating the place, or places where

copies may be obtained.

Chapter Three: Publication and Subscription

Rgstr 71-90 reserved for future use

Rgstr 91 Designation of Agency Representatives

Each agency shall designate a representative to serve as liaison officer in relation to the Office of the State Register. Wherever feasible, a single representative shall be designated to function on behalf of all divisions within the agency or depart department.

Rgstr 92 Notification of designation

Each agency shall notify the Office of the State Register in writing of the name, title, address and telephone extension of each agency representative designated in compliance with Rgstr 91 (relating to designation of agency representatives), promptly upon adoption of these rules. Whenever a change in representation is made by an agency, prompt notification shall be given in writing to the Office of the State Register.

Rgstr 93 Liaison duties

The liaison officer shall represent his agency in all matters relating to the submission of documents to the Office of the State Register and respecting general compliance with the provisions of these rules.

Rgstr 94 Receipt and processing

Documents shall be received at the location and during official office hours as fixed by Rgstr

Rgstr 95 Correction of errors

In the event an agency discovers an error or official text of a document published pursuant to these rules, the agency shall forwith deposit, without regard to the requirements of Minn. Stat. 15.0412 (1975), relating to notice of proposed rulemaking and adoption of rules but with regard to the requirement of approval as to form and legality by the Attorney General, if applicable, or to the other requirements of these rules, with the Office of the State Register an appropriate corrective amendment to the official text. The agency may specify that such amendment shall be effective as of the date of the defective official text with respect to persons who have had actual knowledge of the discrepancy.

Rgstr 96 Publication Schedules

All materials submitted for publication in the State Register shall be published according to schedule 1, 2, or 3, as the Director of the Office of the State Register may determine.

Rgstr 97 Procedure for Schedule 1

A document shall be assigned to "Schedule 1-Emergency" upon specific request of the issuing agency and agreement thereto by the Office of the State Register. Requests may be

made by letter or otherwise, as time permits. Confirmation of the assignment shall be made as promptly as possible.

Rgstr 98 Criteria for Schedule 1

Schedule 1 is designed to provide the fastest possible publication of a document involving the prevention, alleviation, control, or relief of an emergency situation. Requests for such publication should briefly describe the emergency and the benefits attributable to immediate publication in the State Register. Assignments to Schedule 1 shall be allowed whenever feasible.

Rgstr 99 Timing

[Reserved]

Rgstr 100 Procedure for Schedule 2

In the absence of special arrangement with the issuing agency, documents shall be assigned to Schedule 2 for regular publication. Receipt in the ordinary course of business shall be considered as a request for such publication.

Rgstr 101 Timing

Documents assigned to Schedule 2 shall be published on the publication day next following the day of filing. The regular schedule of publication shall be as follows:

Received	Published
[Reserved]	[Reserved]

Rgstr 102 Procedure for Schedule Three

A. Documents received in the ordinary course of business may be assigned to Schedule 3 by the Office of the State Register, which shall cause the agency concerned to be immediately notified of the assignment and the reasons therefore.

B. Documents that are the subject of agreements involving special editorial or publication services may be placed in Schedule 3 by prearrangement.

Rgstr 103 Criteria for Schedule 3

Except by prearrangement, documents may be assigned to Schedule 3 only because of technical problems requiring additional time to prepare material for the press. The requirement of additional time generally may be obviated through advance consultation with the Office of the State Register respecting unusual tabulations, illustrations, or exceptionally voluminous submissions.

Rgstr 104 Timing

A. Except as provided in subsection B of this section, documents assigned to Schedule 3 because of technical problems shall be published as nearly on regular schedule as practicable.

B. Documents assigned to Schedule 3 by prearrangement shall be published on the date agreed upon, without regard to the regular schedule.

Rgstr 105 Requisitions for quantity overruns of specific items

To meet requirements for special distribution in special quantity of the State Register agencies may request an overrun of a specific printing. Notices of overrun must be made to the Office of the State Register at the time material is submitted for publication and shall include the estimated number of copies required. Single issues and overruns may be purchased at either the Office of the State Register or the Documents Section.

Rgstr 106 Subscription and copy prices

A. The annual subscription price for the State Register including postage to any point in the United States, shall be fixed by Commissioner at a rate which will allow the office of the State Register to make the maximum recovery of the cost of publication, or at least to reduce as much as possible, amounts paid by agencies to cover this proportionate share of the cost of operating the State Register as required by Minn. Stat. § 15.051, subd. 4, (1975). Subscribers to the Minnesota State Regulations shall be granted a subscription to the State Register at the usual subscription price.

B. The individual page or copy price of the State Register shall also be fixed by Commissioner at a rate which will allow the office of the State Register to make the maximum recovery of the cost of publication, or at least to reduce as much as possible, amounts paid by

agencies to cover this proportionate share of the cost of operating the State Register as required by Minn. Stat. § 15.051, subd. 4, (1975).

Rgstr 107 Payment for documents

Payments for documents published by authority of the act shall be made to the Documents Section or the Office of the State Register which shall deposit the same in the State Treasury to be recorded by the Department of Finance to the credit of the Office of the State Register.

Rgstr 108 Distribution of publication expenses

Minn. Stat. § 15.051, subd. 4 (1975) provides that in order to reimburse the Office of the State Register for the costs are not recovered by the sale of the State Register to the public, every agency which requests that the publication of rules, proposed rules, notices or other material in the State Register shall pay its own proportionate share of the cost of the State Register. The determination of proportionate cost shall be made by the Commissioner and the agency shall be billed quarterly. Minn. Stat. § 15.051, subd. 4 (1975) provides that the supply and expense appropriation to any state agency is deemed to include funds to pay for the State Register.

Rgstr 109 Functions of the Office of the State Register

It shall be the duty of the director of the State Register, subject to the supervision and direction of the Commissioner to edit, publish and distribute the State Register.

Rgstr 110 Location and office hours of the Office of the State Register

The Office of the State Register is located at _____ _____. Office hours are from _____ to _____.

Rgstr 111 Informal staff assistance

The Office of the State Register is prepared to give informal assistance and advice to officials of the various agencies with respect to general or specific problems of rule drafting, rule making procedures, and promulgation practices.

EXHIBIT A

FACE SHEET
FOR FILING DOCUMENTS
WITH THE OFFICE OF THE STATE REGISTER

Copy below is hereby approved as to form and legality. By: _____ (Special) (Assistant) Attorney General _____ Date of Approval	Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by: _____ (Agency) Date of Adoption: _____ By: _____ Title: _____ (Executive Officer, Chairman or Secretary)	_____ Name of Issuing Agency _____ Name of Agency Subdivision _____ Short Title _____ List of Affected Rules

Do not write in this space.

Exhibit B

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE RICHARD L. BRUBACHER
COMMISSIONER OF ADMINISTRATION

In the matter of the Proposed Adoption of Rules of the State Register Division Governing Operation of the Office of the State Register.

ORDER FOR HEARING

To effectively implement Chapter 380, Laws of 1975, the Minnesota Commissioner of Administration deems it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in me by the above-cited statute.

NOW, THEREFORE, IT IS ORDERED this 24th day of November, 1975, that a public hearing on the proposed rules captioned above be held in Conference Room D, 5th Floor, Veterans Service Building, St. Paul, Minnesota, December 29, 1975, commencing at 9:00 a.m., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

Richard L. Brubacher

RICHARD L. BRUBACHER
COMMISSIONER OF ADMINISTRATION

Exhibit C

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE RICHARD L. BRUBACHER
COMMISSIONER OF ADMINISTRATION

In the matter of the Proposed Adoption of Rules of the State Register Division Governing Operation of the Office of the State Register.

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes 1967, Section 15.0412, Subdivision 4, in the above-entitled matter in Conference Room D, 5th Floor, Veterans Service Building, St. Paul, Minnesota, December 29, 1975, commencing at 9:00 a.m., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted without appearing at the hearing.

The proposed rules include general provisions relating to the contents and format of the State Register and frequency of publication. There are also provisions on the subject of the preparation, submission and transmission of documents for publication. Each agency is required to designate an individual to serve as liaison officer with the office of the State Register. The means for determining subscription and copy prices are prescribed. There are also provisions with respect to publication schedules.

Copies of the proposed rules are now available and may be obtained by writing to George Morrow, Room G-19K State Administration Building, St. Paul, Minnesota, 55155.

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

Richard L. Brubacher

RICHARD L. BRUBACHER
COMMISSIONER OF ADMINISTRATION

Dated: November 26, 1975

Exhibit D

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the matter of the Proposed Adoption of Rules of the State Register Division Governing operation of the Office of the State Register.

442 labels

I hereby certify that the attached _____ ~~sheets~~ constitute the complete list of persons, associations, and other interested groups who as of 3:00 o'clock PM m., this 24th day of November, 1975, have requested pursuant to Minn. Stat. 1974, Sec. 15.0412 that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Joan Anderson Growe
Secretary of State
JOAN ANDERSON GROWE

By Cecil Dion

Exhibit E

AFFIDAVIT

George T. Morrow, being duly sworn on oath deposes and says:

1. That he is an employee of the State Register Division of the State of Minnesota.

2. That on the 24th day of November, 1975, he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat. § 15.0412.

3. That on the 24th day of November, 1975, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

George T. Morrow

Subscribed and sworn to before me

this 24 day of November, 1975.

Colleen T. Kisch
Notary public

COLLEEN T. KISCH
Notary Public, Ramsey Co. Mn.
MY COMMISSION EXPIRES
April 22, 1978

Exhibit F

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption of Rules of the State Register Division Governing operation of the Office of the State Register.

AFFIDAVIT OF MAILING

Sharon Rue, being first duly sworn, deposes and says:

That on the 24 day of November, 1975, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State as well as to all persons listed on the attached sheet as presently being members of the Minnesota Legislature.

Sharon Rue

Subscribed and sworn to before me

this 24 day of November, 1975.

Colleen T. Kisch
Notary Public

COLLEEN T. KISCH
Notary Public, Ramsey Co. Mn.
MY COMMISSION EXPIRES
April 22, 1978

Exhibit G

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE RICHARD L. BRUBACHER
COMMISSIONER OF ADMINISTRATION

In the matter of the Proposed Adoption of Rules of the State Register Division Governing Operation of the Office of the State Register.

STATEMENT OF NEED

The above-captioned rules are not amendments to existing rules of the Office of the State Register.

The need to adopt these rules arises because of Minn. Stat. § 15.041 (1975).

The matters covered by these rules are deemed of sufficient importance and of general applicability and future effect so as to require promulgation of rules.

These rules are being promulgated for the purpose of clarifying how and when rules, executive orders and official notices should be prepared and filed for publication in the State Register. These rules are also intended to provide for efficiency and simplicity of operation with respect to submission of all documents for publication in the State Register.

Richard L. Brubacher

RICHARD L. BRUBACHER
COMMISSIONER OF ADMINISTRATION

Exhibit A

RULES HEARING AGENDA AND GUIDELINES

This hearing is being conducted by an objective Hearing Examiner appointed and employed by the State Office of Hearing Examiners. He is not an employee of the agency proposing to promulgate these rules and has not discussed the merits of any questions involved with either the agency or with any other interested parties. He will strive to conduct an impartial, even-handed hearing in a fair and expeditious fashion. After the hearing he will weigh the evidence and arguments without any predisposition to either accept or reject the proposed rules in preparing Findings of Fact, Conclusions and Recommendations to the agency. The agency will then make its decision as to whether to adopt, modify or reject the proposed rules ~~after waiting at least ten days, during which time the Findings of Fact and Recommendations will be available to affected persons~~. If you desire to be notified when these Findings are available, please so indicate on the register and be sure to include your phone number.

I. AGENDA

1. Hearing Convened by Hearing Examiner
2. Introduction of Agency Panel
3. Explanation of Procedure by Hearing Examiner
4. Introduction of Jurisdictional Documents
5. Presentation by Agency
6. Questions and Statements from Attorneys
7. Questions and Statements from Other Interested Persons
8. Hearing Closed by Hearing Examiner

If any person is peculiarly inconvenienced by the above agenda, such as having to get back to his employment or whatever, he should indicate this to the Hearing Examiner who will consider suspending the agenda to accommodate such special circumstances.

II. GUIDELINES

1. Everyone attending the hearing is required to sign the register as you enter indicating your name, address, and the interest or group you represent. If you wish to be notified when the Hearing Examiner's Findings and Recommendations are submitted to the agency, please so indicate.

2. The purpose of this hearing is to consider whether the proposed rules should be adopted and given the force of law, as if adopted by the Legislature itself. The agency must: (a) document its specific statutory authority to take the proposed action, (b) show that it has fulfilled all relevant substantive and procedural requirements of law or rule, and (c) demonstrate the need for and reasonableness of its proposed action with an affirmative presentation of facts. All persons wishing to express their views will have an opportunity to do so.

3. When the Hearing Officer affords you an opportunity to testify, please step to the area designated for statements, spell your name for the benefit of the court reporter, identify your interest or firm, and speak clearly.

4. All witnesses testifying subject themselves to questioning by a representative of the agency, the Hearing Officer and others present. ~~Non-agency interested persons may refuse to consent to questioning by other non-agency persons~~.

5. If a written statement or other matter reduced to writing is desired to be introduced in evidence, it should be presented to the court reporter to be marked as an exhibit and offered at the appropriate time. Written statements may be introduced at the time an individual offers an oral statement. The right of the agency or others to examine the individual presenting this written statement extends to the content of the statement offered in the written form.

6. This hearing will be recorded by a court reporter. Subsequently a transcript of the proceedings will be available. If you wish to have a copy of the transcript, for which there is a charge, kindly notify the reporter.

7. In order to aid the construction of a proper record, it is requested that witnesses observe the following rules:

a. Only one person shall be allowed to address the hearing at one time.

b. All answers must be verbalized. The court reporter cannot record gestures or the nodding of a head.

c. All technical terms and proper names should be spelled out for the benefit of the court reporter.

8. Attorneys unfamiliar with administrative practice should be aware that the emphasis will be on informality. Exclusionary rules of evidence will be interpreted liberally in the case of all presentations. Exceptions to any rulings are unnecessary and superfluous. The Hearing Examiner will determine what weight should be assigned to evidence and the Findings and Recommendations will be based only on substantial evidence.

9. It should be noted that anyone who desires to submit a written brief or other written comments bearing upon the proposed rules may do so within 20 days of the close of this hearing. Such materials should be submitted to:

Office of Hearing Examiners
Room 300
1745 University Avenue
St. Paul, Minnesota 55104

The materials must be <u>received</u> within the 20-day period to be considered.

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10. You are advised that under Minnesota Statutes, Section 10A.01, Subdivision 11 (1974) any individual representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

Exh. #1

Monday, December 29, 1975

STATEMENT OF GEORGE MORROW, ACTING DIRECTOR OF THE MINNESOTA STATE REGISTER, CONCERNING THE PROPOSED ADOPTION OF RULES OF THE OFFICE OF THE STATE REGISTER.

INTRODUCTION

Minnesota is not the first state to establish a state register and, to require, as part of extensive revision of existing administrative procedures, that the lawmaking functions of governmental agencies be noticed to the general public; nevertheless it is clear that publication of a state register is still not so common as to remain something of an experiment. Furthermore, Minnesota is the first state to require that its Office of the State Register sustain itself on the basis of its subscriptions. It is in this context, as a matter of policy and correct administrative procedure, that the present rules were conceived and are here being submitted for public discussion. The marketplace will ultimately determine whether the Minnesota State Register can be conducted so as to recover the cost of its publication; but it is these rules and the statute behind them which will determine whether the Minnesota State Register has any business competing in that marketplace.

The rules of the Minnesota State Register are, in part, based on the rules of a handful of other similarly situated states. Their experience with publication of a state register, as incorporated in their own rules and procedures, has been adopted wherever it seemed relevant and appropriate for our own purposes; accordingly it may be said that the proposed rules represent the cumulated experience of the states of Texas, Maryland and Pennsylvania. More immediately, they are the consequence of the earnest and thoughtful discussion of an ad hoc committee on the Minnesota State Register that included representatives of the following agencies: the Department of Health, the Department of Administration, the Department of Public Welfare, the Department of Public Safety and the Pollution Control Agency. Though the suggestions of agency representatives were not always accepted (as some of the statements later to be entered into the record may indicate), the proposed rules do represent a concensus of interested parties. At the very least, the proposed rules represent the investment of considerable time and energy and may well be crucial to the success of the publication.

I.

It will be remarked that a number of the proposed rules repeat verbatim the words of the statute, Chapter 380, Laws 1975. (See, e.g., Rgstr 1A, 1B, 4, 6B, 19, 20, 51, 52A, 52B, 60 and 108.) Undoubtedly, there are cogent objections to be made against this practice as a matter of style and policy, not the least of which is that these rules may be taken as a model for the rules of other state agencies; however, it was the concensus of the ad hoc committee on the Minnesota State Register that the newness and complexity of the undertaking required that all relevant law be collected in a single document.

II.

Apparent conflicts between the statute, Chapter 380, Laws 1975, and the proposed rules have been observed. In each case, the rule in question was adopted only after considerable discussion and with the awareness that publication of the Minnesota State Register might otherwise be impossible or that the potential for conflict with other, countervailing statutory provisions made such rules necessary.

Rgstr 4G provides that "Any official notice requested by an agency may be designated for publication by the Commissioner, acting with the advice of the Publication Advisory Board . . .." In apparent conflict, Minn. Stat. § 15.051, Subd. 1, provides that " t he commissioner shall publish any official notices in the register which a state agency requests him to publish;" but that provision must be read together with other language in the same section which provides "the commissioner may prescribe the form and manner in which agencies submit any material for publication in the state register, and he may withhold publication of any material not submitted according to the form or procedures he has prescribed." Furthermore, the delay which would inevitably result from the submission of new and atypical material for publication might very well cause the breach of Minn. Stat. § 15.051, Subd. 2, which provides "no material properly submitted to the commissioner shall remain unpublished for more than working days."[1] Given the practical necessity to exclude certain materials which may be unfit for publication in a state register (such as press releases or notices of appointment of minor agency officials), the statute should be construed so as to give the commissioner,

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1 The same argument may be adduced in support of Rgstr 103, by which materials requiring special preparation must be submitted well in advance of publication.

acting with the advice of the Publication Advisory Board, the power to designate material for publication in the Minnesota State Register.

Rgstr 14 and 16 represent efforts to accomplish the legislative objective of making the Minnesota State Register pay for itself. Though the actual cost of publication must remain speculative pending award of a printing contract, the costs of other state registers suggest that the Minnesota State Register, with a list of 1500 subscribers, may be approximately $75 per page per issue. It is therefore imperative that no extraneous material (that is, material which, because of its general availability and volume is not suitable for publication or, as the case may be, for republication[2]) should be published in the Minnesota State Register. For example, the Building Division has incorporated into its rules, by reference, the Uniform Building Code, a publication which is generally available and which, we shall assume, consists of some 1200 pages; if this material were to be published in a single issue of the Minnesota State Register (assuming that sufficient proofreaders could be hired, on a temporary basis, to accomplish publication in the required time period), the cost, which would be billed to the agency under the statute, would be approximately $90,000. However, it may be argued that the requirement of Minn. Stat. § 15.0412, Subd. 4, that the "full text of the rule proposed for adoption" be published, would not include, in the literal sense, rules incorporated only by reference, as not constituting part of the actual test. With respect to Rgstr 14, the fact that the statute fails to require publication of the "full text" of adopted rules (in contradistinction to the requirement with respect to proposed rules) may be said to express a legislative intent that rules identical in every respect to proposed rules may be published by reference to their previous publication as proposed rules. Obviously, rejection of Rgstr 16 and possibly Rgstr 14 would have the effect of making publication of the Minnesota State Register impossible.

III.

The legal effect of Rgstr 17, reserving a copyright in the State to "cross reference tables, annotations, tables of contents, indices, numerical lists and codification guides" published in the Minnesota State Register, has been the subject of some dispute. It is noteworthy that at least one other state, Pennsylvania, has also reserved a copyright in its state register with language very similar to that found in Rgstr 17. Nevertheless, it seems worthwhile to remark the following: Sufficient caselaw exists to support a claim of copyright by a state;[3] furthermore, "statutory copyright is obtained by

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2 Rgstr 14 allows for publication by reference only wherever the rules adopted are "identical in every respect to rules formerly published in the State Register as proposed rules."

3 1 Nimmer on Copyright § 66 (1975).

publication of the work provided a proper copyright notice is affixed to the original and each authorized copy of the work as published." 1 Nimmer on Copyright § 82 (1975). While authority exists to indicate that the language set out at Rgstr 17 would be sufficient, in and of itself, to create a statutory copyright in the State of Minnesota, reproduction of the traditional copyright sign in each issue of the Minnesota State Register will be recommended as part of the Commissioner's authority to designate other information for publication on the first or second page of each issue as set out in Rgstr 15C.

Registration and deposit of copies of the work in the Copyright Office does not create the copyright, but merely records it.[4] Indeed, registration and deposit of copies prior to publication would be contrary to Section 13 of the Copyright Act and thus would be a nullity.[5] Registration and deposit are necessary only for the purpose of commencing an action for infringement; accordingly, "it is sufficient if the claimant has placed the registration certificate and deposit in the mail on the day he commences an infringement action . . . ."[6] Practical and policy reasons in support of the State's claim of copyright in finding aids only are as follows: 1) to protect unique editorial devices from private competition; 2) to ensure that any copying of the Minnesota State Register be restricted to official documents and not to format, lest the subscription process be circumvented.

CONCLUSION

The Department of Administration welcomes discussion on these and other issues raised by the proposed rules. The uniqueness and complexity of the enterprise require full consideration at the outset if difficulties which might subsequently have the effect of incapacitating publication are to be avoided.

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4 Kraft v. Cohen, 117 F.2d 579 (3rd Cir. 1941); 1 Nimmer on Copyright § 92.1 (1975).

5 17 U.S.C. § 13; See also 1 Nimmer on Copyright § 92.3 (1975).

6 Roth Greeting Cards v. United Card Co., 429 F.2d 1106 (9th Cir. 1970); 1 Nimmer on Copyright § 92.1 (1975). The registration fee for a periodical would be four dollars, payable once only, 17 U.S.C. § 215.

Exhibit J

STATE OF MINNESOTA

SENATE COUNSEL

PETER S. WATTSON
LOUIS W. CLAESON, JR.
JOHN A. ELLEFSON
JOHN B. LENNES, JR.
THOMAS J. TRIPLETT
THOMAS S. DEANS
DIANNE C. HEINS
JAMES E. DINERSTEIN
GARY R. JOHNSON
ALAN C. WILLIAMS

24 STATE CAPITOL
ST. PAUL 55155
(612) 296-2511

December 22, 1975

TO: Mr. George Morrow, Department of Administration

FROM: Thomas J. Triplett, Assistant Senate Counsel
James Nobles, Legislative Analyst, House Research

SUBJ: Proposed rules for state register

We have examined the proposed rules for the operation of the office of state register, and we have the following questions or comments:

1. Generally. We have serious reservations over the desirability of repeating statutory language in agency rules. Clearly, it is appropriate to cross-reference to statutory language where necessary, but we question the desirability of repeating verbatim entire statutory sections. It seems that this technique is a costly exercise in duplication and will needlessly lengthen agency rules. The normal purpose of a rule is to make specific a statute; verbatim repetition does not serve this goal. In addition, if a statutory section is amended, the agency would properly be required to schedule a rule-making proceeding in order to amend the rules to conform with the amended statutes.

We understand that a benefit in including statutory language in rules is the convenience of having all laws relating to a subject matter in one accessible place. However, in our opinion the disadvantages as set forth above outweigh the convenience factor. The rules regarding the state register may very well become precedent-setting for other state agencies involved in the rule-making process, and we therefore urge you to seriously reconsider the inclusion of verbatim statutory language in your rules. In our opinion the proposed rules which should be excluded on the basis of the above reasoning include the following: 1A, 1B, 4, 6B, 19, 20, 51, 52A, 52B, 60, and 108.

You may want to make clear that even though an agency excluded by 4B need not follow all Chapter 15 procedures, it still is required to publish the rules in the State Register (Laws 1975, Chapter 380, Section 5).

2. Rgstr 2. We are unclear as to the origin of the term "gazette" when referring to a state publication. Unless there is statutory recognition of this term, it seems to us that this rule is superfluous and potentially confusing.

3. Rgstr 4. As we indicated before, it seems unnecessary to duplicate statutory language in the rules. If, however, this section is left in, you may want to consider having an additional sub-paragraph which would include all other notices or documents required by statute to be published in the state register. Rule 4G implies that the Commissioner has discretion whether or not to publish an official notice of an agency. Chapter 380, Section 12 clearly requires the Commissioner to publish this information.

4. Rgstr 5. In this rule you cross-reference back to a statute rather than to Rgstr 4. It seems to us that the following words could be omitted from the first sentence: "by Minn. Stat. §§15.0412 and 15.051 (1975) (relating to the contents of the state register)". We do not understand the meaning or significance of the second sentence of this rule.

5. Rgstr 11. You may want to indicate that one "volume" of the register comprises all issues of the register published in a given year.

6. Rgstr 13. Is the use of the terms "title" and "Minnesota Regulations" appropriate? It seems to us that "title" is an appropriate reference to the chapters, or whatever, of the compiled rules although by using this term you may be introducing a new term or concept. Laws 1975, Chapter 380 eliminated the term "regulations" from statutes in favor of "rules," and we therefore believe that use of the term "Regulations" in your rules in inappropriate and confusing. It may be best to use the statutory term when referring to the compiled rules - i.e., the "Manual of State Agency Rules."

7. Rgstr 15. Again, the use of the term "regulations" is inappropriate and confusing. (This same terminology appears elsewhere in the rules but our objection will not be repeated.)

8. Rgstr 16. The reference to "pamphlet laws" is inappropriate and confusing. More generally, it seems to us this rule is susceptible to abuse and should be carefully re-considered. The failure to publish the text of a crucial passage in federal law, for example, may make publication of the rule in the State Register a worthless exercise. Nevertheless, we realize your intent to keep unnecessary matter out of the rules in order to reduce the cost of publication. At this point we have no suggestion as to how to handle this difficult problem.

9. Rgstr 17. We are unclear as to the source and meaning of the term "annotations." Does this suggest that the Commissioner - or another state agency - may be making explanatory or clarifying notes in the State Register? If so, this practice will have potentially serious policy implications and should be carefully re-considered. More generally, does the state have authority to impose copyright-type restrictions on material contained in state documents?

10. Rgstr 18. It seems to us that you should consider a requirement that amendments to rules be drawn to the rule as published in the Manual of State Agency Rules rather than as published in the State Register (assuming, of course, that the rules had in fact been published in the Manual prior to amendment). This is analogous to the concept that amendments to Minnesota statutes are drawn to the most recent codification as opposed to the session laws in which the act was initially published. We further believe that a reference to the Manual would insure greater convenience for interested persons following the rule-making process.

We believe that amendments to rules should be required to be published in a manner showing additions or deletions from the former language. That is, all new language in an amended rule should be required to be underlined, and all deleted language should be required to be crossed out. As you know, this system would comport with the manner in which the state session laws are published. We feel that this requirement is crucial to the meaningful analysis of rule changes by interested persons.

Rule OK on this

An Executive Order is effective upon publication in the State Register, not 20 days thereafter as stated in 18A (Chapter 380, Section 12).

11. Rgstr 58A. The hypothetical "Minn. Reg. Bd. 21" should read "Minn. Reg. BD 21". Is the material following that phrase intended to be parenthetical, or is that material also required to be included on the form submitted to the Register?

12. Rgstr 59. Did you consider requiring the use of a standard form in connection with the preparation of notices of proposed rule-making?

13. Rgstr 62. Approval of the attorney general is only required after agency adoption of a rule. We therefore presume that evidence of this approval is not necessary for publication of notices of proposed rule-making. If this assumption is correct, perhaps the rule should be amended.

14. Rgstr 66. The proper reference to the Harvard White Book should be "A Uniform System of Citation published by the Harvard Law Review."

15. Rgstr 70. The blanket exclusion from the publication of forms may be inappropriate. In certain instances, wording on the forms may be crucial to the implementation of state policy. Therefore, you may want to re-consider this rule so as to give the Commissioner discretionary authority as to whether or not to publish a form.

16. Rgstr 94. It appears that a reference to another rule was deleted.

17. Rgstr 95. We have trouble understanding the significance of this rule. It appears by one reading that an agency will unilaterally be permitted to correct erroneous earlier publications. You may want to make it clear that the later publication should be construed as the original publication for purposes of publication requirements and the effective date of proposed rules and executive orders. We do not see the value of the exception contained in the second sentence of the rule.

18. Rgstr 105. You may want to consider permitting the sale of single or overrun issues at agency offices, where and when appropriate, or at other locations specified by prearrangement with the agency and the Office of the State Register.

19. Rgstr 106. Your desire to reduce the cost to state agencies is notable. However, a crucial element in the state register act is also the guaranteed availability of the State Register to the public. Therefore, we strongly urge you to consider either an additional rule, or a special subscription rate, for such things as public or school libraries. We do not understand the significance of the last sentence in 106A.

20. Rgstr 110, 111. We do not believe these matters should be the subject of agency rule.

TJT:JN:ld

DMIN 1000A (2/66)

Exhibit K

STATE OF MINNESOTA

DEPARTMENT -- Agriculture

Office Memorandum

TO : George Morrow

DATE:

FROM : Jack Ditmore (x7686)

SUBJECT: State Register Testimony

Attached is a copy of the testimony we considered for the hearing. If you have any serious problems, please call me Monday morning.

As you will see, I have referenced the need to spell out billing procedures for agencies in the testimony. While I realize that we will not have information costs at the outset, I do believe that more should be said about procedures. I will supply language by Monday. If you have problems, we can adjust our testimony.

There is also a one line reference to contested cases, noting they should be considered. We would like to be on record as urging this consideration in the future. Again, if this is a problem, we can remove the reference.

DRAFT
2

RE: Testimony on Proposed Rules
for State Register Presented
by the Minnesota Department
of Agriculture

The purpose of this statement is to support, in gneeral, the proposed regulations for the establishment of a State Register pursuant to Laws 1975, Chapter 380.

Of particular importance to the Department of Agriculture, and many other State agencies, are proposed rules which will limit the volume of material which must be submitted for publication. At the same time, the Department of Agriculture is concerned with the provision of essential information to the public. It is our opinion that the proposed rules strike the necessary balance between publication efficiency and the "right-to-know" of the public in three important rules.

**Rgstr 16 deals with "Matter Not Required to be Published". This rule would allow the Commissioner of Administration to designate any generally available publication as a matter which can be incorporated by reference in a proposed rule of an agency. While Laws 1975, Chapter 380 specifies that the State Register contain "the full text of the action being proposed," to publish in full a reference such as Official Methods of Analysis of the Association of Analytical Chemists -- cited by the Department of Agriculture in proposed rules for certified milk laboratories -- would require over 1,000 additional pages in the Register. The additional costs associated with such a publication are prohibitive. We do not believe such publications to be intended by law, provided they are generally available. The Official Methods are generally available.

**Rgstr 14 provides that the Commissioner of Administration may elect to satisfy requirements relating to the content of the State Register with respect to publication rules by signifying that "the rules adopted are identical in every respect to rules formerly published in the State Register as proposed rules". Such a rule is efficient in terms of reducing overall costs and in terms of conserving natural resources. At the same time, citation of the volume and page of the proposed rule provides the pbulic with necessary access.

**Rgstr 70 states that "Tabulated blank forms for application...and the instructions for preparing such forms shall not be published in full, except on special request of the submitting agnecy". The Department of Agriculture employs a significant number of application forms -- such as for bonding and licensing. In our opinion, it is neither efficient nor necessary to publish all such forms. They are readily available through the Department and provided to the public on request.

Because we believe that rules such as those cited above reduce costs while providing protection to the public, we recommend adoption of such rules.

The Department of Agriculture finds the designation of an agency liason officer to be a desirable aspect of the proposed rules. The State Register is a new venture. The liason officer can provide the coordinaiton necessary for efficient inter-agency relationships. The proposed rules do leave open certain internal management concerns which liason officers can function to

mitigate. Therefore, we support the rules at Rgstr 91 to 93.

The general format for the State Register set forth in the proposed rules is similar to that employed by the Federal Register and the registers of certain other states. It is reasonable to employ such a structure in Minnesota.

The Department of Agriculture is not without concerns in relation to the proposed rules. These concerns include:

**The failure to make more explicit agency cost sharing in cases where receipts do not cover costs of publication. Rgstr 108 provides authority to the Commissioner of Administration to determine the proportionate share of costs for an agency and to make quartely billings. We recommend that this process be set forth more explicity, answering such questions as carry-overs in accounting and the method of determination of agency shares in a quarter. Such considerations will effect each agency's budgeting and planning process. However, this concern may be worked out through the liason process established by the proposed rules.

Impression from prepared text

MS 815.06

**The signature requirements of Rgstr 63 are undesirable as they relate to certification by "an acting officer, vice-chairman, assistant secretary or like officer". Where such a person is designated to act on behalf of the cairman, secretary, or executive officer, he or she should be empowered to certify documents.

In the future, we would recommend incorporation of rules relating to contested cases.

~~**The lack of specific reference to publication of notices and proposals for decision in contested cases, While such publication may be afforded under the general provisions of Rgstr 4(G), the procedure provided is cumbersome, We recommend that such publications relative to contested cases be recognized in the rules,~~

Thank you for the opportunity to present our views.

Exhibit L

Minnesota Pollution Control Agency

December 22, 1975

Mr. Richard L. Brubacher
Commissioner of Administration
208 Administration Building
St. Paul, MN 55155

Dear Mr. Brubacher:

The attached statement of the Pollution Control Agency in the matter of the proposed rules governing the operation of the Office of the State Register is submitted pursuant to your notice of hearing dated November 26, 1975.

This Agency does not plan to make an appearance at the hearing on December 29, 1975, however, we request that our statement be included as a part of the record of that hearing.

We are very much in support of the State Register concept and have appreciated the opportunity to work with Mr. Morrow in the development and review of these proposed rules.

Sincerely yours,

Peter L. Gove
Executive Director

PLG:bb
enclosure
cc: George Morrow ✓
Lovell Richie
Sandra Gardebring

STATEMENT OF THE MINNESOTA POLLUTION CONTROL AGENCY
WITH REGARD TO PROPOSED RULES
FOR OPERATION OF THE MINNESOTA STATE REGISTER

The Minnesota Pollution Control Agency is pleased to be able to comment on the proposed rules with regard to operation of the Minnesota State Register which are being considered by the Department of Administration. Representatives of the MPCA have served on the Ad Hoc Committee advising Department of Administration officials responsible for preparing the rules and have been pleased to see many of their suggestions implemented in the rules being considered.

The MPCA believes that, with one exception, the rules will provide for orderly implementation of the statutory provisions with regard to the establishment of the State Register. Such a publication should assist all interested persons in getting clear and current information about proposed actions of the various agencies of state government.

However, with regard to proposed Minn. Reg. Rgstr. 4G, MPCA believes that the limitation on publication of official notices is inconsistent with the statutory provisions of Minn. Stat. §15.051 (Supp. 1975). The proposed regulation allows the Commissioner to "designate for publication" official notices which an agency requests to be published in the Register. This provision allows him the option of denying the publication of some official notices while allowing others to be published and provides no standards by which he is to judge which notices are to be published. The statute, on the other hand, provides that the Commissioner "shall further publish any official notices in the Register which a State agency requests him to publish." (Emphasis supplied.)

While there may be some need to limit the number of "official notices" published, a more prudent path would be to provide a definition of "official notice" within Minn. Reg. Rgstr. 1 in order to distinguish between things which are appropriate for publication in the State Register and things which are not.

Exhibit M

JAN 6 1976

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE
CENTENNIAL OFFICE BUILDING
ST. PAUL, MINNESOTA 55155

December 23, 1975

Mr. George Morrow II, Director
Office of the State Register
G19K State Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Dear Mr. Morrow:

Please submit the following statement as part of the hearing record concerning the proposed rule for the Operation of the Office of the State Register.

The Department of Public Welfare supports the proposed rule for the operation of the Office of the State Register.

The Department feels that the proposed rule will provide for public access and up-to-date information pertaining to state agencies' organizational structures, rules, and official notices.

Furthermore, the State Register will provide for public input into state agency's rules by serving as a vehicle whereby notices of agency action are posted in seeking to obtain information or opinions from sources outside the agency.

Very truly yours,

Vera J. Likins
Commissioner

Exhibit N

STATE OF MINNESOTA

JAN 19 1976

ENVIRONMENTAL QUALITY COUNCIL
CAPITOL SQUARE BUILDING
550 CEDAR STREET
ST. PAUL, 55101

January 16, 1976

Office of Hearing Examiners
Room 300
1745 University Avenue
St. Paul, Minnesota 55104

RE: In the Matter of the Proposed Adoption of
Rules of the State Register Division Governing
Operation of the Office of the State Register

Dear Mr. Hearing Examiner:

We had indicated in our testimony before the hearing panel, our intentions of submitting further detailed written testimony regarding the above referenced rules. Please consider the following comments as additional testimony to that which had been previously given by our agency.

We recommend the attached comments be given consideration by the Hearing Examiner in his review of the proposed rules. We would also appreciate receiving a copy of the Hearing Officer's Findings as soon as they become available.

Sincerely,

Peter Vanderpoel

Peter Vanderpoel,
Director

PV/dh

"AN EQUAL OPPORTUNITY EMPLOYER"

Additional Comments On The Proposed Rules Of The State Register

GENERAL

Several places in the rules the language used is identical to that offered in the statute. Although we agree that duplicating the statutory language is necessary in some instances, we do not feel merely repeating that language serves the purpose of rule-making. The intent of a rule-making procedure is to clarify and interpret the statutes; not restate them word-for-word. If the latter situation was the intent, there would be no need for a rule-making procedure.

Another reason for rule-making is to clearly set forth the procedure to be followed in implementing the statute. We have noted that the rules contain many sections for which no provisions are proposed at this time, but for which language is to be incorporated at a later date. While we understand the difficulty of writing some of these sections, we feel that, as a minimum, the intent of the Department of Administration for these sections should be included in the proposed rules. By allowing procedures to be prescribed at a later date, after the rule-making process is complete, affected parties are unable to comment on actions which affect them. If language is to be incorporated after the rules are adopted, we believe the rule-making agency should be compelled to hold additional rule-making hearings.

As the rules are currently proposed, there is no time constraint placed on an agency as to when it must publish a hearing notice or other notice of public interest. We recognize time constraints are given in other statutes as to when notices must be made public, but we do believe it would be in the public interest to require their publication in the State Register at least three weeks prior to the action occurring.

CHAPTER ONE: GENERAL PROVISIONS

A statement of the purpose of the rules and by what authority they are being promulgated should be included at the beginning of the proposed rules.

Rgstr 1 -- Definitions

This section should be expanded to include additional terms which are ambiguous. We feel that definitions, for the following terms, should be included:

Act:	This could be defined and then referenced in several places eliminating unnecessary language.
Days:	As used in the rules, does it mean working days or calendar days? Are weekends and holidays included?
Emergency:	Emergency is used in several places; but, it is never indicated as to what constitutes an emergency.

Original: What constitutes an original copy? The type of material submitted for publication (original or duplicate copy)

Rgstr 4 -- Contents of State Register

(E) At which stage in the rule-making process is it required to publish the full text of the rules? As it is presently stated, it is unclear as to whether the existing rules, the proposed rules or the adopted rules are to be published.

(G)(2) What is a "new function"? If it is determined what a "new function" is, what kind of notice is required? What should be included in the notice?

(G)(3) "Commissioner" has been defined in Rgstr 1(C) of these rules to be the "Commissioner of the Department of Administration." If this definition applies to this section, then only the appointment of commissioners of the Department of Administration would receive official notice in the State Register. This is clearly not the intent of the statute. Because of this ambiguity, either the definition of commissioner or the language of this section should be amended. The new language should reflect the statutory intent that official notice of the appointment of all commissioners be given.

Rgstr 6 -- General

(B) Will the single issue of the State Register that is devoted to description of agency organizations be a special issue or a regular issue? If it is a regular issue, it would be 4 weeks between issues containing regular material which is clearly beyond the "ten working day" requirement of the statutes.

Rgstr 11 -- Numbering and Dating

As this section now reads, all issues are to be dated "Wednesday, October 15, 1975". Language changes should be made so that it is clear that the words "Wednesday, October 15, 1975" are given as an example only.

Rgstr 13 -- Numerical Finding Aids

This section is unclear. What is a "cumulative numerical list"? Does "each issue" mean all the following issues forever?

Rgstr 19 -- Presumptions Created

(C) What does "original" mean? The existing rules, the proposed rules, or the adopted rules? This definition should be included either here or in the definition section.

CHAPTER TWO: PREPARATION, SUBMISSION AND TRANSMITTAL OF DOCUMENTS

Rgstr 51 -- Publication Withheld

The Commissioner should not withhold material from publication without providing written notice to the submitter within a reasonable time.

Rgstr 58 -- Affected Documents

(A) To reference all the appropriate Regulations for each submission would be a cumbersome process. We recommend this section be made permissive instead of mandatory.

Rgstr 61 -- Rules; Filing

Please refer to our previous comments on "original." The ambiguity of this section regarding who can certify the copies should be clarified by including all agency heads or their designees.

Rgstr 64 -- Waiver

Guidelines for when the commissioner can make this determination should be included in these rules.

Rgstr 70 -- Forms

What are "tabulated blank forms"? If the whole form is not to be published, the agency should be required, as a minimum, to publish a description of the contents of the form.

CHAPTER THREE: PUBLICATION AND SUBSCRIPTION

Rgstr 96 -- Publication Schedules

Material submitted for publication should be published cccording to the procedures outlined in Rgstr 97-104, not as the office staff determines.

Rgstr 105 -- Requistions for quantity overruns of specific items

The Administrative Procedures Act which allows the State Register to be divided into parts for ease of distribution. This section should be clarified as to whether an individual has to purchase the entire issue or just the parts they are interested in.

Line 3 should read "Requests" or "Orders" for overrun instead of "Notices".

How long will back issues of the State Register be kept on file? The duration that copies will be available should be a part of the rules.

What is the disposition of the material submitted for publication? Will it be returned to the submitter? If the printing process requires the making of plates, will they be available for use by the submitter in preparing reprints?

These questions should be addressed in this section.

Rgstr 106 -- Subscription and copy prices

What discretion does the Commissioner of Administration have in altering the subscription rate? Can he do it quarterly as Rgstr 108 seems to imply? Does he have to give notice when he does it?

Rgstr 108 -- Distribution and Publication expenses

How will the "determination of proportionate cost" be made? What cost factors will be included?

These questions should be answered by this section.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

March 1, 1976

Mr. George Morrow
Office of State Register
State Capitol Credit Union Building
95 Sherburne Avenue
St.Paul, Minnesota

RE: In the Matter of the Proposed Adoption of Rules of the State Register Division [of the Department of Administration] Governing Operation of the Office of the State Register
Our File No. HE-REG-001-MG

Dear Mr. Morrow:

Enclosed please find the file on the above-entitled matter. It is complete except for the Report and cover letter which were transmitted to you on February 26, 1976.

The file consists of:

a. Two copies of the hearing transcript
b. All jurisdictional exhibits (exs. B, C, D, E, F, G)
c. All non-testimonial exhibits (Exs. A, H)
d. All testimonial exhibits and comments (Exs. I, J, K, L. M, N)
e. Memorandum dated February 18, 1976, withdrawing certain rules
f. List of persons registered at the hearing
g. Copy of letter to those registered at the hearing.

I have retained other documents (correspondence, etc.) which are not a part of the record. There was no reference to or reliance on materials which are not part of the official record in preparation of the Report.

Yours very truly,

Myron Greenberg

MYRON GREENBERG
Hearing Examiner

MG/eag
Encs.

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

February 27, 1976

Mr. George Morrow
Office of the State REgister
208 Adminstration Building
St. Paul, Minnesota - 55155

RE: In the Matter of the Proposed Adoption of Rules of the State Register Division [of the Department of Administration] Governing Operation of the Office of the State Register.

Dear Sir or Madam:

Pursuant to your request at the hearing on the above-entitled matter, please be advised that the report of the Hearing Examiner in this matter has been submitted to and filed with the agency involved. The agency is required to make a copy of said report available to any interested person upon request.

Yours very truly,

Myron Greenberg

MYRON GREENBERG
Hearing Examiner

MY/eag

OMIN 1000

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Office of the Commissioner
Department of Administration

TO : Duane Harves

DATE: Feb. 18, 1976

RECEIVED
FEB 19 1976
OFFICE OF HEARING EXAMINERS

FROM : Norman R. Osterby
for RLB

SUBJECT: State Register Rules

This is to inform you of our intention to withdraw any rules, now proposed for the Office of the State Register, which merely incorporate and repeat the requirements of Ch. 380, Laws 1975. Specifically, I wish to withdraw Rgstrs. 1-5, 7-10, 18-20, 59, 60, and 106-111.

This is being done pursuant to discussions had between Mr. Morrow, Acting Director of the Office of the State Register, and yourself and pursuant to recommendations made by the legislative research people who were involved in the drafting of the enabling legislation.

RLB/mab

PROPOSED RULES OF STATE REGISTER

HEARING DATE: 12-29-75

EXHIBITS RECEIVED AT AND AFTER HEARING:

Exhibit

A. Proposed rules for operation of the office of the State Register

B. Order for Hearing

C. Notice of Hearing

D. Certificate - Secretary of State's list

E. Affidavit - George T. Morrow, obtained Secretary of State's list

F. Affidavit of Mailing

G. Statement of Need

H. Copy of Rules Hearing Agenda and Guidelines

I. Statement of George Morrow, Acting Director of the Minnesota State Register

J. Memo dated December 22, 1975 to Mr. George Morrow from Thomas J. Triplett and James Nobles regarding proposed rules for State Register

K. Memo to George Morrow from Jack Ditmore regarding State Register testimony

L. Letter dated December 22, 1975 to Richard L. Brubacher from Peter L. Gove with statement attached

M. Letter dated December 23, 1975 to Mr. George Morrow from Vera J. Likins; received January 6, 1976

N. Letter dated January 16, 1976 to Office of Hearing Examiners from Peter Vanderpoel with statement attached; received January 19, 1976.

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

FINDINGS OF FACT

A hearing on proposed rules for the operation of the Office of the State Register was convened by Myron Greenberg, voluntarily appointed as Hearing Examiner at the direction of Commissioner Richard L. Brubacher of the Department of Administration, on December 29, 1976, at 9:00 a.m., in Conference Room B, 5th Floor, Veterans Services Building, St. Paul, Minnesota, and was conducted under the Rules of the Attorney General (Atty Gen 302 and 303) promulgated under Minn. Stat. § 15.0412, subd. 4 (1974). The hearing continued until all representatives of agencies or other interested groups or persons had an opportunity to participate and be heard concerning the adoption of the proposed rules.

On February 25, 1976 the Hearing Examiner issued his Report (HE File No. REG-76-001-MG) containing his Findings of Fact, Conclusions and Recommendations concerning the proposed rules for the Office of the State Register. The Department of Administration generally accepts the Findings of Fact, Conclusions and Recommendations of the Hearing Examiner and wishes to express its sincere appreciation for the competent and professional manner in which he conducted the hearing and presented his findings. This Department does, however, express certain reservations and exceptions to sections of that Report, which reservations and exceptions constitute the substance of these findings.

1. This Department does not accept the Examiner's conclusion (para. 5, page 3) that certain of the proposed rules exceed the Commissioner's authority to promulgate rules, under Minn. Stat. § 15.051, subd. 1.

Minn. Stat. § 15.051, subd. 1 grants to the Commissioner of Administration the authority to "prescribe the form and manner in which agencies submit any material for publication in the State Register, and he may withhold publication of any material not submitted according to the form or procedures he has prescribed." Further, Minn. Stat. § 15.051, subd. 1 grants to the Commissioner of Administration the authority to "organize and distribute the contents of the register" by such methods and "according to such categories as will provide economic publication and distribution and will offer easy access to information by any interested party." Clearly, the statute authorizes the Commissioner to promulgate the attached rules regarding both the external and internal operation of the Office of the State Register as a necessary and reasonable means to carrying out the legislative mandate to provide for public notice.

Within the power to organize must rest the authority to make such determinations as: arrangement of materials (Rgstr 6), numeration and dating of issues (Rgstr 11), providing of subject indices and finding aids (Rgstr 12 and 13), arranging and copyrighting of format (Rgstr 15 and 17), referencing of rules (Rgstr 14), arranging of liaison procedures with agencies to be served (Rgstr 91, 92 and 93), and scheduling of publication times (Rgstr 99, 101, 102, 103 and 104). Within the power to prescribe the form and manner of submitted materials must rest authority to prescribe requirements as to language (Rgstr 65), punctuation (Rgstr 66), capitalization (Rgstr 66), spelling (Rgstr 66), land descriptions (Rgstr 67), and the

publication of forms (Rgstr 70). The practical need for uniformity and clarity in every issue of the State Register requires that the Commissioner establish these procedural guidelines.

2. The Examiner finds (para. 5, page 3) that several of the rules "are concerned only with 'internal management' of the State Register and 'do not directly affect the rights of or procedures available to the public,' and therefore, "that they 'need not be adopted as rules'" (Minn. Stat. § 15.0412, subd. 3). The Department does not find that these rules are internal. Rgstr 14, 15, 17, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 103 and 104 go directly to the notice and rule-making policies and procedures available to the agencies and, therefore, affect the public, who depend upon such rules and notices to obtain knowledge of an agency's public activities. The Legislature has declared publication of documents in the State Register to be the primary means of providing public notice.

3. This Department rejects the finding (para. 11) of the Hearing Examiner concerning Rgstr 12, providing for a table of contents (12.A.), and providing for an analytical cumulative subject index (12.B.). The Department finds that such tools are necessarily implied by the statutory authority given to the Commissioner to "organize and distribute the contents of the register according to such categories as will offer easy access to information by any interested party" (Minn. Stat. § 15.051, subd. 1). Without such tools, easy access to the information contained in the State Register will be greatly frustrated. As the Examiner himself stated (para. 15, page 10), directly quoting the testimony of Messrs. Thomas J. Triplett and James Nobles, the draftees of the legislation, in reference to another section of the proposed rules: "care must be taken that publication does

not become a 'worthless exercise.'" The great quantity and complexity of materials required to be published in the State Register will render it ineffective as a vehicle for general notice to the public, unless such devices are provided to facilitate its use by providing reference to previously published materials.

4. The Department also rejects the Examiner's findings concerning Rgstr 13 (para. 12). The Commissioner is well within his statutory authority to organize the State Register in any manner which "will offer easy access to information by any interested party" (Minn. Stat. § 15.051, subd. 1). Numerical finding aids will unquestionably facilitate such access for the same reasons as applied to paragraph 3 above.

5. Rgstr 15 outlines the format to be used in the State Register. In order that the Register may be fully utilized by the public and governmental agencies, a clear, general awareness of its format is mandatory. For this reason, the Department: 1) rejects the Examiner's finding that Rgstr 15 is unnecessarily and unreasonably included in the proposed rules (para. 14); and 2) accepts his finding that Rgstr 15 must be clarified and modified in the manner recommended by the Examiner.

6. The Department accepts the Hearing Examiner's finding with respect to Rgstr 16 that the "full text" provision of Minn. Stat. § 15.0412, subd. 4 does not contemplate publication of materials incorporated by reference in proposed and adopted rules submitted for publication. The Department does not, however, accept the conclusion that Rgstr 16 is "of questionable legality" (para. 15). The Legislature surely could not have intended that agencies be burdened with the tremendous cost of publishing complete reference works when such may be made generally available and are merely referred

to in published materials. To argue so is to raise a conflict with Minn. Stat. § 645.17(1) that "the legislature does not intend a result that is absurd, impossible of execution, or unreasonable." Minn. Stat. § 15.0412, subd. 4 requires only that "full text of the rule proposed for adoption be published." Had the Legislature intended the publication of materials incorporated only by reference it would have made its intention explicit, since the usual practice has long been to the contrary; Wallace v. Commissioner of Taxation, 289 Minn. 220, 221, 184 N.W.2d 588, 589 (1971).

The rule will otherwise be modified and clarified as recommended by the Examiner.

7. The Department of Administration has considered the suggestion of the EQC with relation to Rgstr 58 (para. 24) and has found that the requirement that a list of all sections of rules affected by the materials submitted accompanying any rules submitted for publication in the State Register must be mandatory rather than permissive. The Examiner found proposed Rgstr 58 reasonable and we see no need to disturb his findings on the matter.

8. Rgstr 65, requiring the drafting of documents in plain readable English," is modified by a section which reads: "except where subject matter requires." The Department believes this rule to be obviously necessary if the purpose of the State Register, i.e. effective public notice, is to be carried out. The Legislature gave the Commissioner the authority to "prescribe the form and manner" of any materials submitted. A presription with respect to plain, readable English in non-technical materials is within the Commissioner's powers to prescribe "form."

9. The Department accepts the recommendation of the Hearing Examiner

that Rgstr 69 is in need of clarification. As revised, the rule does not violate the statutory requirement of publication of materials within ten working days of submission to the State Register (Minn. Stat. § 15.051, subd. 2); rather, the rule recognizes the need for advance notice in order that illustrations and tabular materials be published on schedule. It requires that a notice of intent to publish such materials, accompanied by advance copies, be submitted to the Office of the State Register twenty working days prior to formal submission of such materials for publication in order that the date of publication will not be unnecessarily delayed by technical difficulties associated with the typesetting process. Printing schedules are such that a more expeditious arrangement is rendered impossible.

10. Much the same revisions and clarifications as applied to Rgstr 69 have been made in the case of Rgstr 102, 103 and 104. The three rules outline Schedule 3 procedures, which upon revision refer only to materials, which because of technical problems, will require early notification of the Office of the State Register by the submitting agencies. Again, the purpose of these rules is to eliminate unnecessary delays so as to guarantee compliance with statutory time limits.

Based upon the foregoing Findings of Fact, the Department of Administration makes the following:

CONCLUSIONS

The Commissioner of Administration adopts the Conclusions of the Hearing Examiner as presented in his Report of February 25, 1976 (HE File No. REG-76-001-MG), with the following exceptions and reservations:

1. That Rgstr 95, 96, 97, 98, and 100 do not deal with "procedures concerning only internal management" under Minn. Stat. § 15.0412, subd. 3.

2. That Rgstr 6, 11, 12, 13, 14, 15, 17, 65, 66, 67, 70, 91, 92, 93, 99, 101, 102, 103 and 104 do not go beyond the Commissioner's authority to prescribe "the form and manner in which agencies submit any material for publication in the State Register" under Minn. Stat. § 15.051, subd. 1.

Finally, the Commissioner of Administration concludes that Rgstr 6, 11, 12, 13, 14, 15, 16, 17, 51, 52, 53, 54, 55, 56, 57, 58, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 91, 92, 93, 94, 95, 96, 97, 98, 100, 101, 102, 103, 104 and 105 should be adopted with the modifications therein included.

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

Richard L. Brubacher

COMMISSIONER OF ADMINISTRATION

STATE OF MINNESOTA

OFFICE OF HEARING EXAMINER

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE MYRON GREENBERG

HEARING EXAMINER

In the Matter of the Proposed Adoption of Rules of the State Register Division Governing Operation of the Office of the State Register.

R E P O R T

HE File No. REG-76-001-MG

The hearing in the above-entitled matter was convened by Myron Greenberg, duly appointed Hearing Examiner, on December 29, 1975, at 9:00 a.m., in Conference Room B, 5th Floor, Veterans Service Building, St. Paul, Minnesota. The hearing continued until all representatives of associations or other interested groups or persons had an opportunity to participate and be heard concerning the adoption of the proposed rules.

Prior to the Hearing Examiner's preparation of his Findings of Fact, Conclusions and Recommendations, the Office of the Commissioner of Administration requested that the following rules be withdrawn:

Rgstr 1, 2, 3, 4, 5, 7, 8, 9, 10, 18, 19, 20, 59, 60, 106, 107, 108, 109, 110, 111.

Said rules were withdrawn and are not considered in these Findings of Fact, Conclusions or Recommendations.

The Hearing Examiner, upon all of the records, files, evidence, arguments of counsel and written comments, hereby makes and issues the following as his:

FINDINGS OF FACT

1. That the Order for Hearing issued on November 24, 1975 was in all respects proper in form, contents, execution and filing.

2. That due, timely and adequate legal notice of the hearing ordered by the Office of the State Register was properly served and filed. All other substantive and procedural requirements, statutes or rules have been complied with.

3. That Rgstr 1, 2, 3, 4, 5, 7, 8, 9, 10, 18, 19, 20, 59, 60, 106, 107, 108, 109, 110 and 111 have been withdrawn by the Office of the Commissioner of Administration and do not require Findings of Fact, Conclusions or Recommendations with respect thereto.

4. That the Statement of Need for these rules presented at the hearing was not specifically criticized in testimony or written comments.

5. That the Office of the State Register in its Statement of Need cited Minn. Stat., § 15.041 (1975) as the source of its authority to promulgate the proposed rules. That section of the statute was repealed by Ch. 806, § 13, Laws of Minnesota 1957. A review of Chapter 15 of the Minnesota Statutes indicates the following authority for promulgation of rules for the State Register:

> Minn. Stat., § 15.051, subd. 1. Purpose.
>
> The commissioner of administration shall publish a state register containing all notices for hearings concerning rules, giving time, place and purpose of the hearing and the full text of the action being proposed. Further, the register shall contain all rules, amendments, suspensions, or repeals thereof, pursuant to the provisions of this chapter. The commissioner shall further publish any executive order issued by the governor which shall become effective upon such publication. The commissioner shall further publish any official notices in the state register which a state agency requests him to publish. Such notices shall include, but shall not be limited to, the date on which a new agency becomes operational, the assumption of a new function by an existing state agency, or the appointment of commissioners. The commissioner may prescribe the form and manner in which agencies submit any material for publication in the state register, and he may withhold publication of any material not submitted according to the form or procedures he has prescribed. (Emphasis added)

Further study of the statutes reveals that an agency's authority to promulgate rules is governed by Minn. Stat., § 15.0412, subds. 1 and 3.

> Minn. Stat., § 15.0412 Rules, procedures.
>
> Subdivision 1. Each agency shall adopt, amend, suspend or repeal its rules in accordance with the procedures specified in sections 15.0411 to 15.052, and only pursuant to authority delegated by law and in full compliance with its duties and obligations.
>
> * * *
>
> Subd. 3. Each agency shall adopt rules setting forth the nature and requirements of all formal and informal procedures related to the administration of official agency duties. Procedures concerning only internal management which do not directly affect the rights of or procedures available to the public need not be adopted as rules.

The agency's reference to Minn. Stat., § 15.041 was apparently an oversight and would not subject the entire notice and hearing process to default. The statutes cited,however, seem to limit the scope of rule-making authority of the commissioner in the case of the State Register to the "form and manner in which agencies submit any material for publication."

It is the Examiner's conclusion that the following proposed rules exceed the commissioner's authority to prescribe such "form and manner" of submitting material for publication:

> Rgstr 6, 11, 12, 13, 14, 15, 17, 65, 66, 67, 70, 91, 92, 93, 99, 101, 102, 103 and 104.

Careful scrutiny of the proposed rules reveals further that many of them are concerned only with "internal management" of the Office of the State Register and "do not directly affect the rights of or procedures available to the public." As such, Minn. Stat., § 15.0412, subd. 3, provides that they "need not be adopted as rules." Of the proposed rules not withdrawn, the following are found to be concerned only with internal management of the agency:

> Rgstr 14, 15, 17, 91, 92, 93, 95, 96, 97, 98, 99, 100,101, 102, 103 and 104.

Based on the foregoing conclusions, it is recommended that all of the above-mentioned rules not be adopted.

In the event that it is determined that such proposed rules are within the agency's authority to promulgate, however, the Hearing Examiner has made Findings of Fact, Conclusions and Recommendations on all the rules which were not withdrawn. Each paragraph of this report dealing with those rules is marked by an asterisk (*) to indicate a rule found to be beyond statutory authority to prescribe "form and manner" or a plus sign (+) to indicate a rule which concerns internal management. These symbols are meant to reiterate the caveat that such findings are to be considered only in the event that the Findings of Fact, Conclusion and Recommendation contained in this paragraph is incorrect.

6. That the Department of Public Welfare supported the proposed rules as providing (a) "public access and up-to-date information pertaining to state agencies' organizational structures, rules and official notices" and (b) "public input into state agency's rules by serving as a vehicle whereby notices of agency action are posted in seeking to obtain information or opinions from sources outside the agency." (Ex. M) Similar general support was given by the Minnesota Pollution Control Agency. (Ex. L)

7. That the proposed rules were considered for presentation by an ad hoc committee which included the State Printer as well as representatives of various state agencies and which was "dedicated to the establishment of a consensus on the subject of these rules." (T. 4) Although no minority report was filed, that committee did not, apparently, reach unanimous consent on the rules.

8. That substantial comment was received regarding verbatim repetition of statutory language in the proposed rules.

Most of the rules containing such statutory language have been withdrawn, and the remaining rules which use such language (Rgstr 6, 51 and 52) do so reasonably and for the purpose of informing persons without ready access to the statutes of certain statutory requirements.

*9. That Rgstr 6 is reasonable and necessary for general knowledge of the arrangement of the State Register. The four principal headings set out in Rgstr 6.A. afford interested persons a general idea of where to look for specific kinds of published material. No comment was received on this subsection.

The Environmental Quality Council (EQC) did point out that Rgstr 6.B. is somewhat unclear as to whether the issue of the State Register devoted to descriptions of agency organization is in addition to the regular, at-least-once-every-ten-days, publication or in lieu of such publication. (Ex. H, p. 2) Clarification of this rule would be for convenience purposes only because material properly submitted to the office of the State Register must be published within ten days according to Minn. Stat., § 15.051, subd. 2 (See ¶46, infra). Modification of this rule for purposes of clarification would not result in a substantial change requiring a rehearing. It is recommended that the proposed rule be modified accordingly.

*10. That Rgstr 11 is reasonable and necessary to specify a uniform system for numbering and dating each issue of the State Register. Comments received after the hearing noted that the rule, as written, requires all issues of the State Register to bear the legend, "Wednesday, October 15, 1975, St.Paul, Minn." (Ex. N, p. 2) It is obvious that such legend was provided as an example only. It was also suggested that the rules specify that one volume of the State Register comprises all issues of the register published in a given year. (Ex. J, § 5) Modifying Rgstr 11 to take note of these comments or suggestions

would not constitute a substantial change. It is recommended that the rule be changed accordingly.

*11. That Rgstr 12, providing for a table of contents and an analytical cumulative subject index is not a necessary rule. The devices mentioned in the rule would be useful tools for referring to the content of the State Register, but such tools are not authorized by statute. The table of contents mandated by Rgstr 12.A. could reasonably be incorporated into Rgstr 6 which sets out the order of the State Register.

The type of index established by Rgstr 12.B. appears to have been considered by the Legislature. (See Laws 1975, Chap. 61, § 8; Chap. 380, § 9; Minn. Stat., § 645.33) Responsibility for such a tool was given to the Commissioner of Administration in his mandate to ". . . publish a manual of state agency rules which . . . shall be so designed as to allow for economic publication and distribution and efficient use." (Emphasis added) Minn. Stat., § 15.047, subd. 1. If the Commissioner of Administration determines that an analytical, cumulative subject index is a reasonable means to provide for "efficient use" and that "economic publication and distribution" of such index is best accomplished through publication in the State Register, then he may so provide. It is not for the State Register, however, to provide for such a tool even though it may cover all the material published in the State Register, and, as Mr. Morrow mentions, be "of great utility to the practicing bench and bar." (T. 6)

Although no comments or testimony, other than Mr. Morrow's, were addressed to Rgstr 12, the Examiner concludes that Rgstr 12.A. is reasonable and can be included as part of Rgstr 6 (if Rgstr 6 is adopted), and further, that Rgstr 12.B., although a potentially useful addition to the State Register, is neither reasonable nor necessary and is not a proper matter for the

rules of the State Register. It is therefore recommended that Rgstr 12 not be adopted.

*12. That Rgstr 13, dealing with numerical finding aids, like Rgstr 12, provides a potentially useful tool which is not contemplated by the statute dealing with the State Register and which appears to fall within the area assigned to the Commissioner of Administration by Minn. Stat., § 15.047. (See discussion in ¶ 11, supra) Comments on Rgstr 13 asserted that the rule is generally unclear (Ex. N, p. 2), and specifically uses terms which are either unclear ("title") or not preferred by the Legislature ("regulations"). Messrs. Triplett and Nobles pointed out that "title" appears to be a reference to "chapters" of compiled rules, and "Minnesota Regulations" appears to refer to what is recognized by Minn. Stat., § 15.047, subd. 1, as the "Manual for State Agency Rules." (Ex. J, § 6) If Rgstr 13 is adopted, it is recommended that appropriate changes be made in terminology to conform to the suggestions noted herein.

*+13. That Rgstr 14 which allows for publication of rules by reference to identical prior publication in the State Register is reasonable and necessary to assure economy and conservation of natural resources in the publishing of the Register. Favorable comment on Rgstr 14 was received from the Department of Agriculture. (T. 33)

Mr. Morrow argued convincingly that Minn. Stat., § 15.0412, subd. 4, does not require publication of the "full text" of adopted rules though it does require publication of the full text of proposed rules. (Ex. I, § 11) (See also, ¶ 15, infra, regarding publication of full text of proposed rules) Neither the statute nor the proposed rules address the situation where parts of the adopted rules differ from the proposed rules. For completeness and to avoid possible questions, the Examiner recommends that the rule, if adopted, be specific as to what will

be published if adopted rules differ in whole or in part from proposed rules.

Rgstr 14 should also be modified to eliminate reference to Rgstr 4 which has been withdrawn.

*+14. That Rgstr 15 which details the format of the State Register deals with matters internal to the agency and was not demonstrated to be reasonable or necessary for inclusion in the proposed rules. If such rule is adopted, however, it should be modified to substitute the word "rules" for "regulations" wherever it appears. Legislative preference for the word "rule" instead of "regulation" was demonstrated by adoption of Laws 1975, Chap. 380, which indicates that "regulation" and "rule" are identical and eliminates "regulation" to avoid redundancy and confusion. Similarly, "Minnesota Regulations" should be changed to "Manual of State Agency Rules." (See ¶ 12, supra) Further, in the interest of uniformity, it is suggested that the title of Rgstr 15 use the term "State Register" instead of "Register," the former term being generally used throughout the proposed rules.

15. That Rgstr 16, which specifies material not required to be published, is reasonable and necessary (albeit of questionable legality) to clarify the statutory mandate of Minn. Stat., § 15.0412, subd. 4, that the ". . . full text of the rule proposed for adoption," be published. Testimony at the hearing dealt mainly with questions of (1) whether "full text" means the text of a document as submitted or the text of a document submitted including the text of all material referenced in such document; (2) what is a "generally available publication" as stated in Rgstr 16.D., and (3) who decides what is "generally available."

Although the "full text" provision of the statute relates specifically to rules, Rgstr 16 deals with any documents submitted for publication, and the discussion on Rgstr 16 addressed

the expanded coverage of the rule.

Mr. Morrow testified orally and in the agency's Statement of Need that the "full text" provision of the statute does not include other text incorporated only by reference in the material submitted for publication. (T. 6; Ex. I, § 11) The Department of Agriculture favored that position and noted that (a) the Legislature probably did not intend for the State Register to publish complete reference works when such are specified or referred to in materials which are to be published (especially if such materials are generally available), (b) the cost of publishing all referenced materials would be prohibitive, and (c) incorporation of materials by reference conserves natural resources. (T. 21, 22, 33)

Messrs. Nobles and Triplett registered their concern that "this rule is susceptible to abuse and should be carefully reconsidered. The failure to publish the text of a crucial passage in federal law, for example, may make publication of the rule in the State Register a worthless exercise." (EX. J, § 8)

Further questions and comments on the rule were directed more specifically to what constitutes a "generally available publication" and how or by what criteria, if any, they would be "so designated by the Commissioner [of Administration]." No definition of the phrase "generally available" was proffered, and, in fact, Mr. Morrow agreed that the discretionary power of the Commissioner to designate what publications are generally available, "may have to be accepted as being contrary to the statute." (T. 22) He also pointed out, however, that the Commissioner's discretion is used only when the agency does not specify that materials incorporated by reference are to be published in full. (T. 6)

The most convincing argument for allowing incorporation of materials by reference without publishing the full text of such

materials is that voluminous statutes, rules, textbooks and reference works would have to be published in the State Register even though such materials are reasonably accessible to those affected by the document incorporating the materials. The three examples brought out in testimony are illustrative of the absurdity of publishing such referenced materials: (1) The Uniform Building Code (1200 pages) is incorporated by reference into the rules of the Building Code Division of the Department of Administration (T. 21; Ex. I, § II); (2) the Official Methods of Analysis of the Association of Analytical Chemists (over 1000 pages) is incorporated into regulations being issued by the Department of Agriculture dealing with certified milk laboratories (T. 21, 22); (3) the State Register's proposed Rgstr 66 cites five textbooks and manuals to establish some uniformity in style of materials submitted for publication (T. 22; see also Ex. A). The cost of example (1) is approximated to be $90,000, which cost is borne by the submitting agency. The myriad problems associated with publication of such voluminous materials (proofreading, handling and distributing the bulk, etc.) raise serious basic questions about the legislative intent associated with the words "full text." Because publication of such incorporated-by-reference materials would make publication of the State Register virtually impossible, the Examiner concludes that Rgstr 16 is properly included in the proposed rules in order to implement and make specific statutory language which is ambiguous and recommends its adoption.

It is recognized that the problem stated by Triplett and Nobles is a serious one. The purpose of publication is, after all, to apprise interested persons of proposed or final action. Care must be taken that publication does not become a "worthless exercise." Balancing the interests of informing the public and keeping the materials published in the State Register manageable

might be accomplished by giving the Commissioner of Administration discretion to omit the text of material incorporated by reference unless (a) specifically requested by the submitting agency, or (b) omission of referenced material is likely to result in the failure of interested parties being adequately informed. Changing Rgstr 16 from the mandatory ("shall") to the discretionary ("may") would not result in a substantial change requiring rehearing, since the subject was adequately discussed at the hearing after due notice had been given to interested and affected parties.

Additional comment on Rgstr 16 was received which asserted that "the reference [in Rgstr 16.A.] to 'pamphlet laws' is inappropriate and confusing." (Ex. J, § 8) It is so concluded and recommended that the term "pamphlet laws" be clarified or omitted. Further, it is noted that the scope of Rgstr 16 might be clarified by inserting the words "or proposing" in the third line of the rule between the words "adopting" and "the" if such addition is consistent with the intent of the agency.

*+16. That Rgstr 17 is a reasonable statement of general permission to reproduce parts of the State Register. The rule was questioned at the hearing and in comments with respect to its provision for claiming copyright protection on certain material. (T. 38; Ex. J, § 9) Support and precedent for the use of copyright by a state were offered by Mr. Morrow in referring to Pennsylvania, which apparently has a similar provision, and case law cited by Nimmer on Copyright, § 66 (1975). (Ex. I, § III) No mention was made of whether Pennsylvania has a law similar to Minn. Stat., § 15.17 which essentially makes all official state documents accessible to the public for all purposes, including copying. He further pointed out that the copyright can be used to protect unique editorial devices from private competition without incurring any expenses (unless the state attempts

to enforce the copyright protection.) (T. 38, 39; Ex. I, § III).

Use of the term "annotations" in Rgstr 17 was questioned by Mr. Triplett. He noted that there is no provision in the Administrative Procedures Act for anything other than promulgation and publication of rules, but Rgstr 17 implies that the Commissioner of Administration can supplement the submitted rules with comments, notes or whatever else is meant by the term "annotations". (T. 11; Ex. J, § 9) No need was demonstrated for inclusion of the term, and it is therefore found to be superfluous and potentially beyond the Commissioner's statutory authority. The Examiner recommends that the term be deleted from the rule if the rule is adopted.

17. That Rgstr 51 is a necessary reiteration of the Commissioner's statutory authority to withhold from publication improperly submitted material. The EQC suggested, "The Commissioner should not withhold material from publication without providing written notice to the submitter within a reasonable time." (E . N, p. 3) Such provision for notice would be a reasonable and insubstantial modification of the rule. The Examiner concludes that Rgstr 51 is reasonable and recommends its adoption.

18. That Rgstr 52, as modified at the hearing, is a reasonable statement of statutory requirements for approval and filing of rules as well as requirements for filing for publication. In response to concerns about the meaning of "original copies" as the phrase appears in Rgstr 52.C. (as well as in Rgstr 61), Mr. Morrow agreed to substitute the phrase "duplicate legible copies." (T. 25, 26, 29; Ex. N, p. 2) Further modification of the substitute terminology might be "an original and [at least] one duplicate legible copy" instead of "two duplicate original copies." Such modification is, of course, for the determination of the agency at the time of its adoption of the rules. It is recommended that the rule be adopted with modifications.

19. That Rgstr 53 is required to advise anyone submitting material to the agency of their responsibility for the accuracy and completeness of the material. It is a reasonable statement of that responsibility and was not criticized at the hearing or in written comments. (See ¶ 21, infra, for related findings.) The rule should be adopted.

20. That Rgstr 54 is a reasonable general statement that documents submitted for publication must conform to the rules of the Office of the State Register. The proposed rule is ambiguous, however, in that the phrase "generally in the form indicated" implies that there is no need for strict compliance with the form prescribed by the rules. Confusion in the rule is compounded by reference to "the appendix attached" when no such appendix exists. (See Ex. A) It is recommended that the rule be modified to eliminate the ambiguity and confusion prior to its adoption.

21. That Rgstr 55 is a reasonable requirement that the name of the agency submitting material to the office of the State Register appear on the front page of the document. Although no comment was addressed to this point, Rgstr 55, 53, 56, 57, 63, 64, 97 and 100 contain the undefined and ambiguous phrase "issuing agency." It is not clear from the proposed language whether the agency referred to is the agency submitting material for publication or the agency which actually issues the State Register, i.e., the Office of the State Register. The Examiner recommends that the agency adopt the rule and clarify the phrase "issuing agency" by changing it to "submitting agency" (as it appears in Rgstr 70). (See ¶¶ 19, supra, 22, 23, 27, 28, 41 and 44, infra.)

22. That Rgstr 56 is a reasonable requirement that any subdivision of an agency which submits materials for publication identify itself in a manner similar to and proximate to the name of the agency (as required by Rgstr 55). No comments were

reeeived relating to this rule at the hearing or subsequent thereto, so it is concluded that the proposed rule is acceptable to all those affected and recommended that the rule be adopted. (But see ¶ 21, supra, regarding the phrase "issuing agency.")

23. That Rgstr 57 is reasonable to identify the subject matter of a document submitted for publication by requiring a short descriptive title for each document so submitted. This rule was not criticized at or after the hearing and is recommended for adoption. (But see ¶ 21, supra, regarding the phrase "issuing agency.")

24. That Rgstr 58 is necessary to provide adequate information about which rules are affected by documents submitted for publication. This rule was modified insubstantially at the hearing for editorial reasons. (T.20, 21; Ex. J, § 11) As with Rgstr 13 and 15, the terms "Minnesota Regulations" and "Minnesota State Regulations" should be changed to "Manual of State Agency Rules." (See ¶¶ 12 and 14, supra)

The EQC commented that it might be cumbersome to require the submission of a list of all sections of rules affected by the material submitted for publication and suggested that such a list be permissive instead of mandatory. (Ex. N, p. 3) Although no response by the agency or other comments were directed to the EQC's suggestion, the Examiner concludes that the proposed language is reasonable because the submitting agency is generally in a better position than the office of the State Register to determine what existing rules are affected by the submitted material. The Examiner recommends that the rule be adopted. There is, of course, no restriction on the agency's consideration and implementation of such meritorious suggestions as the EQC's.

25. That Rgstr 61 is necessary to advise anyone who desires to submit material for publication where and how many copies to submit. The phrase "original copies" was changed to "duplicate original copies" at the hearing. (See ¶ 18, supra) Further

comment was addressed to the certification requirement of the proposed rule. (See ¶ 27, infra) Note is taken also that the title of Rgstr 61, "Rules; filing" indicates that it deals with the filing of rules only. If so, the phrase "or other documents" appears to be extraneous and should be deleted. If not so, the title should be changed so as not to mislead or cause confusion. In any event, the subject matter of this rule is very closely allied with that of Rgstr 52, and the Examiner recommends that the two rules be combined when adopted.

26. That Rgstr 62 is clearly needed to maintain a degree of physical uniformity in the documents submitted to the office of State Register for publication. Mr. Morrow noted that such uniformity will facilitate the printing process, and without such uniformity, it would not be possible to publish the periodical on a weekly basis. (T. 7) Furthermore, provision has been made for flexibility regarding these requirements in Rgstr 64. (See ¶ 28, infra)

Comments on Rgstr 62 were directed to particular requirements which are unclear. It was pointed out that approval of the Attorney General is only required after agency adoption of a rule. Minn. Stat., § 15.0412, subd. 4. Evidence of such approval would therefore not be necessary for publication of notices of proposed rules. Messrs. Triplett and Nobles suggested that Rgstr 62.A.1. be changed to clarify when the Attorney General's approval is necessary.

Language changes are also necessary for conformity to statutory preference and clarity. In the last paragraph of Rgstr 62.A.1 and 62.A.2, the phrase "this regulation" should be changed to "this rule" or "these rules" according to the desire of the agency. In the same paragraphs, the term "Central Stores" should be clarified to indicate what and where that is.

In response to a question by the Hearing Examiner, Mr. Morrow testified that the prohibition of interlineation in Rgstr 62.A.3.

may cause some inconvenience to the submitting agency (in that the copy submitted will have to be "clean" and free of errors), but is necessary for efficiency in processing and printing. (T. 42-44)

Notice was also taken that Exhibits A and B, incorporated into Rgstr 62, themselves do not conform to the physical description or instructions set out in the rule. Mr. Morrow conceded that the exhibits are examples of "tentative and suggestive" forms. (T. 39, 40) This conflicts with the language of the rule which implies that the exhibits represent the prescribed form for submission. If such forms are desired by the agency to be incorporated into the rules, they should be in final form or they should not be included at all, and reference to them deleted from Rgstr 62.A.1. and 62.A.2.

Whether or not the exhibits are included as part of the rules, Ms. Streed suggested and Mr. Morrow agreed that the rules include some provision for serial pagination of submitted documents to minimize the problem of mishandling, mixing-up or losing material. (T. 30; T. 50, 51)

The Hearing Examiner concludes that the criticism and suggestions noted herein improve and clarify the proposed rules and recommends that the adopted rules be modified to reflect such consideration. Whether such modification would constitute a substantial change requiring further public hearings depends upon the changes themselves and cannot be determined prior to such changes.

27. That Rgstr 63 is reasonable to assure authenticity and approval of documents by the certification by an appropriate authorized representative of the agency submitting the material. The requirement of signing by "an acting officer, vice chairman, assistant secretary or like officer" was criticized by Mr. Ditmore as unnecessary and undesirable. (T. 35) He pointed out that Minn. Stat., § 15.06, provides for delegation of power by

commissioners or agency heads. Persons so delegated, Mr. Ditmore contended, should be accepted by the Office of the State Register as having the authority to certify documents for publication. Leaving the rule as proposed would probably result in unnecessary delay according to Ditmore. It was suggested that certification be allowed by "all agency heads or their designees", and that the rule be modified to reflect the suggestion (Ex. N, p. 3) This suggestion and Mr. Ditmore's comments apply equally to Rgstr 61 as discussed in ¶ 25, supra.

Rgstr 63, as noted with respect to Rgstr 61 in ¶ 25, supra, deals with the filing requirements and procedures first mentioned in Rgstr 52. For the sake of clarity and utility, the Examiner recommends that Rgstr 63 be made part of (or relocated proximate to) Rgstr 52.

Insubstantial modification of phraseology in Rgstr 63 is also necessary to make the rule conform to other rules. Specifically, the phrase "duplicate original documents" should be changed to read "duplicate legible copies of documents" to avoid confusion. (See ¶¶18 and 25, supra, relating to Rgstr 52 and 61, respectively). The phrase "issuing agency" should also be changed to read "submitting agency." (See ¶ 21, supra)

It is further noted that there is no need for the use of a subdivision such as appears in Rgstr 63 where only one special situation is provided. Better form would be to eliminate the colon and the numeral and continue the paragraph without any subdivision.

The Examiner recommends that the agency make the modifications set forth herein prior to adopting the rule. Such modifications would be insubstantial since they were the subject of adequate notice prior to hearing.

28. That Rgstr 64 is reasonable and necessary to allow some flexibility, where necessary, in the requirements for submission of material for publication. The only comment this rule received

was the suggestion by the EQC that guidelines indicating when the Commissioner can waive requirements set out in Rgstr 64 be included in the rule (Ex. N, p. 3). Although no comment was made by the Office of the State Register in response to this suggestion, such guidelines would serve to limit the flexibility intended by the rule as proposed. Such guidelines would likely "affect the rights of or procedures available to the public" according to Minn. Stat., § 15.0412, subd. 3, and therefore require promulgation as rules. The agency may include such guidelines in the adopted rules if it desires to be more explicit in interpreting Rgstr 64, but such modification may be considered a "substantial change." It is recommended that the rule be adopted as proposed with only the modification of the term "issuing agency" as noted in ¶ 21, supra.

*29. That Rgstr 65 is not necessary or reasonable to prescribe the form and manner in which documents are submitted for publication. The agency submitted that the purpose of the rule is to eliminate inscrutable or unintelligible language or documents (T. 44, 45). The rule, as proposed, presents an obvious problem of determining what is "plain, readable English." This raises a substantial question whether the commissioner has any authority to dictate the content or language of materials submitted for publication. It is recommended that Rgstr 64 be eliminated from the adopted rules.

*30. That Rgstr 66 is reasonable to assure a degree of uniformity and propriety in stylistic and grammatical content of material published in the State Register. This rule comes close to Rgstr 65 in dealing with the content of material submitted, but is less objectionable in that it does not deal with the substance of material, only the style. The rule was modified at the hearing to substitute the term "spelling" for the term "orthography" as it appears in the title and body of the rule. (T. 45) Further modification was suggested to properly refer to what is commonly called the Harvard White Book as "A Uniform System of

Citation published by the Harvard Law Review." The Examiner recommends that the rule be modified accordingly if the rule is adopted.

31. That Rgstr 67 is necessary to assure uniformity in the descriptions of tracts of land. This rule is one step further removed from the objections to Rgstr 65 than Rgstr 66 because it deals with a technical area which normally requires uniformity in description, even though such description is more properly considered a matter of content or substance instead of form. No criticism was made of this rule at hearing or in written comments, and it is recommended that it be adopted as proposed if the agency decides to adopt it.

32. That Rgstr 68 is reasonable and necessary for uniformity in expression of numbers. There was no criticism of this rule during or after the hearing. The Examiner recommends its adoption.

33. That Rgstr 69, if modified, is needed to advise submitters of material which includes illustrations or tables of special requirements necessary for printing. The rule's provision for "delayed filing and publication according to Schedule 3" is patently beyond the statutory requirement of publication within ten working days. Minn. Stat., § 15.051, subd. 2. (See ¶ 46, infra, regarding Schedule 3) Similarly, the requirement in Rgstr 69.A. for submission of illustrations "four weeks before the date on which publication is desired" exceeds statutory authority. The same applies to the two-week provision of Rgstr 69.B. which, according to Mr. Morrow, is intended to mean two weeks prior to the ten-day period allowed by statute for publication. (T. 46)

If the two-week provision is to be interpreted as written, i.e., two weeks before actual publication, the only modification necessary would be to change "two weeks" to "ten days" as agreed

to by Mr. Morrow at the hearing (T. 30). Assuming that the interpretation contained in the preceding sentence is correct, Rgstr 69.B. would be redundant with other provisions of the rules (Rgstr 96-101) and, therefore, unnecessary and possibly confusing.

There was no specific presentation of facts demonstrating the need for reduction of illustrations to "approximately 8 by 10 1/2 inches" as specified in the last sentence of Rgstr 69.A., but such a requirement is reasonable if the State Register is to be published on 8 1/2 by 11-inch paper. The phrase "legible reproduction" as used in Rgstr 69.A. may be confusing since it refers to illustrations and not written copy. Clarity could perhaps be improved by substituting "reproducible copy" for the phrase.

It is recommended that Rgstr 69 be modified as suggested herein and adopted.

*34. That Rgstr 70 is intended to advise those agencies wishing to submit forms for publication of how forms are handled. The rule as proposed, however, fails to distinguish between forms which are promulgated as an integral part of a rule and those which are utilized for other purposes. The former are required to be published in the State Register in order to be effective (Minn. Stat., § 15.0412, subd. 4); the latter are not. The language of Rgstr 70 would allow the submitting agency to determine what forms would be published in full and which would be published by a "brief statement describing the function of the form." The EQC commented that "if the whole form is not to be published, the agency should be required, as a minimum, to publish a description of the contents of the form." (Ex. N, p. 3)

As noted by Mr. Triplett, "whether or not a form is a rule should be determined by the statutory language, the definition of a rule. It should not be within the discretion of an agency head to determine whether or not his form is a rule." (T. 12) "In certain instances, wording on the forms may be crucial to the

implementation of state policy." (Ex. J, § 15) Mr. Triplett went on to suggest that the rule be changed to give the Commissioner of Administration (rather than the submitting agency head) discretion to determine whether or not a form is a rule (T. 12). It is the opinion of the Hearing Examiner that the determination of what is a "rule" is a legal question to be determined by the Attorney General. Once determined that a form is rule, it must be published to be effective.

Mr. Morrow supported Rgstr 70 by noting his agency's concern with the cost of publication and the avoidance of unnecessary costs (T. 18). Mr. Ditmore apparently agreed that it is not necessary to publish all forms used by an agency, especially where such forms are readily available through the appropriate department and where provided to the public upon request. (T. 33, 34)

The Examiner agrees that forms which are not part of or in themselves do not constitute rules need not be published in the State Register. Where requests for publication of such non-rule forms are made, the office of the State Register may prescribe the appropriate form and manner for their submission and publication, but where the form constitutes all or part of a rule, it must then be published in its entirety. It appears to the Examiner that provision can be made for such publication in a manner similar to that provided for the publication of illustrations in Rgstr 69, and it is hereby recommended that the rule be modified accordingly if adopted.

Additionally, the EQC noted the ambiguity of the phrase "tabulated blank forms" as it appears at the beginning of Rgstr 70. The Examiner agrees that the phrase is confusing and recommends that it be modified by eliminating the first two words.

*+35. That Rgstr 91 is reasonable to establish a more or less formal contact agent between the ffice of the State Register and other agencies. This rule was not criticized at or after the hearing and was, in fact, supported (together with Rgstr 92

and 93) as helping (a) to establish a means to coordinate the efficient use of the State Register and (b) to mitigate internal management concerns left open by the rules. (T. 35) The rule was modified editorially at the hearing to strike the word "depart" as the second to last word of the rule. This change was insubstantial, and it is recommended that the rule, if adopted, be adopted as proposed.

*+36. That Rgstr 92, providing for notification to the Office of the State Register of the name of the submitting agency's liaison officer is required to facilitate communication between the two agencies. It is a reasonable requirement and was not criticized. The Examiner concludes that the rule is reasonable and recommends that it be adopted if Rgstr 91 and 93 are adopted.

*+37. That Rgstr 93 is reasonable to generally define the duties of a liaison officer. Mr. Morrow modified this rule at the hearing by adding after "The liaison officer" the words "or any other duly designated authority." The change was made to provide for the absence of incapacity of the individual designated as liaison in Rgstr 91 (T. 48). No other comments were offered regarding this rule, and it is recommended that the rule be adopted as modified if Rgstr 91 and 92 are adopted.

38. That Rgstr 94 is a reasonable provision to inform interested parties where and when material is to be submitted for publication. This rule was modified at the hearing to add the number "110" at the end of the sentence. (T. 20) Since Rgstr 110 has been withdrawn from the proposed rules, Rgstr 94 will require further modification to clarify where and when documents are to be received. It is suggested that the rule be changed to read: "Documents shall be received at the Office of the State Register during regular office hours." This change incorporates part of the originally proposed Rgstr 110 and is an insubstantial change. The Examiner recommends that the rule be adopted with the suggested or other clarifying change.

+39. That Rgstr 95 is necessary to provide a procedure for correction of editorial errors discovered after publication of a document in the State Register. At the hearing, the rule was changed as follows: (a) at the end of the first line, add the words "omission in the" and (b) correct the spelling of the fourth word in the third line to "forthwith." (T. 20)

Use of the term "rule-making" is somewhat ambiguous since there is no rule or statutory definition of the term, and it appears to be used instead of the term "rule." It is concluded that term "rule" should be used to avoid confusion and recommended that such language modification as noted in this paragraph be adopted in the rule.

In comments received after the hearing, a question was raised as to the value and necessity of the exception contained in the last sentence of the proposed rule. (Ex. J, § 17) The exception deals with the effective date of material published with defective official text. Such situations are controlled by Minn. Stat., § 15.048 which states:

> 15.048 EFFECT OF PUBLICATION OF RULES OR ORDERS. The filing or publication of a rule, regulation, or order raises a rebuttable presumption that:
>
> (1) The rule or regulation was duly adopted, issued, or promulgated;
>
> (2) The rule or regulation was duly filed with the secretary of state and available for public inspection at the day and hour endorsed thereon;
>
> (3) The copy of the rule or regulation is a true copy of the original rule or regulation; and
>
> (4) All requirements of sections 15.046 to 15.049 and regulations prescribed thereunder relative to such regulations have been complied with.

The agency cannot by rule change the clear meaning of a statute. The last sentence of Rgstr 95 is hereby concluded to be contrary to statute, and it is recommended that the entire sentence be stricken from the rule. Such recommendation moots the necessity of substituting a different term for "amendment" as it appears

in the last sentence. The phrase "corrective amendment" as it appears in the ninth line of Rgstr 95, however, was criticized at the hearing (T. 26). Since Mr. Morrow agreed that the word "amendment" is subject to "some ambiguity" (T. 26), it is recommended that the agency find a suitable unambiguous substitute therefor.

The rule was also criticized in general as being difficult to understand (Ex. J, § 17). It could mean "that an agency will unilaterally be permitted to correct erroneous earlier publications." (Ibid.) It is also unclear which publication is to be construed as the original publication for purposes of publication requirements and the effective date of proposed rules and executive orders. (Is the effective publication date the date when the material is published with errors, or the date when the material is published correctly?)

Further, Rgstr 95 was criticized by Ms. Streed for not dealing with the correction of errors in published rules which are discovered either (a) during the 20-day period from time of publication to the time such rules become effective, or (b) after such 20-day period. (T. 28)

The Examiner concludes that the proposed rule is incomplete and ambiguous. If the agency decides to adopt such a rule, it should be changed to reflect the comments and suggestions made herein.

+40. That Rgstr 96 is reasonable as an introduction and general statement concerning publication schedules and subsequent rules (Rgstr 97-104) specifying such schedules. The rule was criticized by the EQC as being internally inconsistent. (Ex. N, p. 3) It was noted that if materials are to be published according to a "schedule" and the criteria for determining the controlling schedule are set forth in the rules, then the phrase "as the Director of the Office of the State Register may determine" is superfluous, if not contradictory. In other words, what falls

within a given schedule is determined by the criteria, not by the Director of the State Register. This inconsistency can be eliminated by deleting the phrase quoted above, and it is so recommended.

Another minor inconsistency is the lack of capitalization of the word "schedule" as it appears in Rgstr 96. (The word is capitalized in all other rules.) This is an editorial modification which has no material bearing on the rule itself.

Further modification of the rule may be necessary if the Examiner's recommendations regarding the elimination of Schedule 3 as contained in Rgstr 102-104 are adopted. (See ¶ 46, infra)

+41. That Rgstr 97 reasonably establishes a procedure for classifying a document for publication according to Schedule 1. Although there was no specific criticism of this rule, note is taken that the rules mention only "Schedule 1", and there is no mention or definition of "Schedule 1 - Emergency" anywhere other than in Rgstr 97. It is concluded that the last-quoted phrase is an editorial error and recommended that such phrase be modified to conform to other terminology, i.e., "Schedule 1." Further, the term "issuing agency" as it appears in the second line of the rule should be changed to "submitting agency," consistent with prior recommendations. (See ¶ 21, supra)

+42. That Rgstr 98 reasonably establishes the criteria for classification of a document as one to be published as quickly as possible. No criticism of this rule was offered during or after the hearing. The Examiner notes, however, without recommendation, that the last sentence of Rgstr 98 may be more properly included with Rgstr 97. Such a change would be insubstantial. It is recommended that the rule be adopted if other rules dealing with schedules are adopted.

*+43. That Rgstr 99, which purports to deal with the timing of publication for materials classified as "Schedule 1" is clearly unnecessary and unreasonable. This rule (and Rgstr 101

to a lesser extent) consists of a title only with the bracketed notation that the substance of the rule is "reserved," presumably to be completed by the agency at a later time. In support of proposed Rgstr 99 (and Rgstr 101), Mr. Morrow cited the "impossibility" of knowing exactly what the timing for the printing schedules would be in the absence of a printing contract and the establishment of the Office [of the State Register] itself. (T. 31)

Testimony and comments relating to rules with "reserved" sections were very critical. The EQC submitted the following comment:

> Another reason for rule-making is to clearly set forth the procedure to be followed in implementing the statute. We have noted that the rules contain many sections for which no provisions are proposed at this time, but for which language is to be incorporated at a later date. While we understand the difficulty of writing some of these sections, we feel that, as a minimum, the intent of the Department of Administration for these sections should be included in the proposed rules. By allowing procedures to be prescribed at a later date, after the rule-making process is complete, affected parties are unable to comment on actions which affect them. If language is to be incorporated after the rules are adopted, we believe the rule-making agency should be compelled to hold additional rule-making hearings. (Ex. N, p. 1)

Similar testimony was heard at the hearings. (T. 29)

The practice of reserving section numbers at the end of a chapter of laws or rules is commonly accepted with the understanding that such reserved sections will not be used until and unless all proper procedures for hearing and adoption of substantive matters which might occupy that reserved space have been followed. Thus, for example, no question or comment was heard regarding the notation "Rgstr 71-90 reserved for future use" which appears immediately preceding Rgstr 91 (Ex. A). When, however, a reserved section falls within a substantive rule, is titled and/or partially completed and purports to deal with a matter of substance and importance to affected parties, then it

is prima facie suspect of failure to fulfill procedural requirements for the promulgation of rules. (See, generally, Minn. Stat., § 15.0412)

It is concluded for reasons stated herein that Rgstr 99 is incomplete and that its completion would constitute a substantial change requiring rehearing. The Examiner strongly recommends that Rgstr 99 not be adopted.

If Rgstr 99 is subsequently completed in a manner which concerns timing of publication, the Examiner recommends that it be entitled, "Timing for Schedule 1" to avoid confusion with other rules which may deal with timing for other sections. Alternatively, the Examiner recommends that only one rule deal with "Timing of Publication" and that subsections of such rule deal with the various publication schedules.

+44. That Rgstr 100 is necessary to advise anyone submitting material for publication of the normal procedure for publication. This rule was not criticized during or after the hearing. As in other proposed rules, however, clarity and consistency would be served by substituting "submitting agency" for the phrase "issuing agency." (See ¶ 21, supra) It is recommended that the rule be adopted with such modification.

*+45. That Rgstr 101 is neither reasonable nor necessary as proposed by virtue of its incompleteness. The problems of "reserved" parts of rules are discussed in ¶ 43, supra, and apply equally to Rgstr 101. It is recommended that the rule not be adopted.

*+46. That Rgstr 102, 103 and 104, all dealing with "Schedule 3," are specifically unreasonable as violating the statutory restriction on length of time allowed for publication of properly submitted material. Much attention was directed toward the ten-day publication requirement established by Minn. Stat., § 15.051, subd. 2, which states, in part:

> Publication. The commissioner of administration shall publish the state register whenever he deems necessary, except that no material properly submitted to him for publication shall remain unpublished for more than ten working days. (Emphasis added)

Mr. Morrow commented that "the delay which would inevitably result from the submission of new and atypical material for publication might very well cause the breach of Minn. Stat., §15.051, subd. 2. . . ." (Emphasis added) (Ex. I, § II) He also argued that "material which is going to be difficult to print, illustrations and tabulary material set out in Rgstr 69, should be submitted well in advance of the time that it is actually offered for publication. . . . The alternative . . . is that such material cannot be published in the State Register within the statutory time period." (T. 46) Mr. Morrow went on to say that Schedule 3 was designed somewhat as a compromise provision to have agencies submit problematic material well in advance of publication so the printer can have the material ready for printing. (T. 46)

The statute is clear and unambiguous. There is no authority to delay publication of properly submitted material for more than ten working days; Mr. Morrow recognized that requirement and agreed it is controlling. (T. 6, 30, 46) The timing section of "Schedule 3," as set out in Rgstr 104 provides for publication without regard to the statutory mandate. It is concluded that Rgstr 104 is not authorized by law and that Rgstr 102 and 103 are consequently irrelevant.

The Examiner recommends that Rgstr 102, 103 and 104 be excluded from any rules adopted by the agency.

The Examiner suggests that the agency can minimize the chance of delay in publishing "problematic material" by specifically providing for printing of such material, under all circumstances, in the printing contract. This might require payment of a premium but would ultimately allow for statutory compliance.

Another possibility for ameliorating the problem would be some informal arrangement between the Office of the State Register and submitting agencies to accomplish essentially the same end as provided by Schedule 3. (Perhaps this arrangement could be worked out with the liaison officers.)

47. That Rgstr 105 is reasonable and necessary to establish an orderly procedure for requesting and obtaining quantity overruns of the State Register. Many constructive comments were received by the Hearing Examiner after the hearing. The EQC suggested that (1) the first word of the second sentence should be changed from "notices" to either "orders" or "requests"; (2) the rule "be clarified as to whether an individual has to [order and/or] purchase the entire issue or just the parts they are interested in"; and (3) there be some specification in the rule of the length of time that copies will be available. These suggestions are all reasonable, and, if implemented, would serve to clarify the rule without causing substantial changes. It is recommended, therefore, that the rule be adopted with modifications to reflect the suggestions contained herein.

The suggestion was made "to consider permitting the sale of single or overrun issues at agency offices, when and where appropriate, or at other locations specified by pre-arrangement with the agency and the Office of the State Register." (Ex.J, § 18) The EQC also questioned whether material submitted for publication by the submitting agency or individual will be available for use by such submitting, particularly plates used in the printing process. Whether these subjects are to be addressed in the rules is matter for determination by the Office of the State Register, and the Examiner makes no recommendation with regard thereto.

Based on the foregoing Findings of Fact, the Hearing Examiner makes the following as his

CONCLUSIONS

1. That the Hearing Examiner was duly appointed and had jurisdiction over the within proceeding.

2. That relevant legal and procedural requirements of statute and rule have been properly complied with.

3. That there was no documentation of statutory authority to promulgate the proposed rules but that such statutory authority exists.

4. That the following rules, as modified where appropriate, will properly implement the legislative mandate of Minn. Stat., § 15.051, subd. 1:

Rgstr 16, 51, 52, 53, 54, 55, 56, 57, 58, 61, 62, 63, 64, 68, 69, 94 and 105.

5. That the following rules, as modified where appropriate, further implement the legislative mandate of Minn. Stat., § 15.051, subd. 1, but deal with "procedures concerning only internal management which do not directly affect the rights of or procedures available to the public [and] need not be adopted as rules" under Minn. Stat., § 15.0412, subd. 3:

Rgstr 95, 96, 97, 98 and 100.

6. That the following rules do not implement the legislative mandate of Minn. Stat., § 15.051, subd. 1, and are beyond the commissioner's authority to prescribe "the form and manner in which agencies submit any material for publication in the State Register":

Rgstr 6, 11, 12, 13, 14, 15, 17, 65, 66, 67, 70, 91, 92, 93, 99, 101, 102, 103 and 104.

7. That a clear and compelling need has been demonstrated for the adoption of the proposed rules cited in ¶4, above, as modified where appropriate.

Based on the foregoing CONCLUSIONS, the Hearing Examiner makes the following as his

RECOMMENDATIONS

1. That the following proposed rules of the Office of the State Register be promulgated, approved and adopted:

Rgstr 16, 51, 52, 53, 54, 55, 56, 57, 58, 61, 62, 63, 64, 68, 69, 94 and 105.

2. That the following proposed rules of the Office of the State Register not be promulgated, approved or adopted:

Rgstr 6, 11, 12, 13, 14, 15, 17, 65, 66, 67, 70, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 102, 103 and 104.

Dated this 25th day of February, 1976.

Myron Greenberg

MYRON GREENBERG
Hearing Examiner

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George Haley	907 E Wyoming	296-6823	Minnesota Dept. of Aero	
Jack Ditmore	State Office Building Rm. 557	296-7686	Minn. Dept. of Agriculture	
Roger M. Hill	Highway Bldg Rm 611	296-3046	MHD	●
Ella Staudenmaier	148 Cent. Bldg	296-2874	Dept. Admin. (Documents)	
Jerry Clydesdale	161 Hwy Bldg	296-2523	Public Safety	✓
Lurene M Jackson	2509 Major Circle N	330-6223	NSP	✓
Steve Clapp	2333 Univ Ave SE	331-5571	Minn Hosp Assn	X
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JIM NOBLES	G-17 CAPITOL	296-	HOUSE STAFF	✓
KENNETH W BJORK	402 HIGHWAY	296-7840	DEPT. HIGHWAYS	X
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